Feb 15 1875

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 505.

WILLIAM SMITH, PLAINTIFF IN ERROR,

vs.

JAMES M. ADSIT, IMPLEADED WITH SUEL WRIGHT AND PATRICK ROURK AND THE TRUSTEES OF SCHOOLS OF TOWNSHIP 34 N., R. 6 E., IN GRUNDY COUNTY, ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

Dismissed

FILED SEPTEMBER 19, 1874.

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Dismissed
per stipulation

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1 At a supreme court, begun and held at Ottawa, on Tuesday, the thirteenth day of September, in the year of our Lord one thousand eight hundred and seventy, within and for the northern grand division:

Present, Charles B. Lawrence, chief justice; Pinkney H. Walker, justice; Sidney Breese, justice; John M. Scott, justice; Wm. K. McAllister, justice; Anthony Thornton, justice; Benj. R. Sheldon, justice.

JAMES M. ADSIT, IMPLEADED, &c., *vs.* WILLIAM SMITH. } No. 339. Appeal from superior court of Chicago.

Be it remembered that, heretofore, to-wit, on the fifteenth day of September, in the year of our Lord one thousand eight hundred and sixty-nine, came James M. Adsit, impleaded, &c., appellant herein, by King, Scott & Payson, his attorneys, and filed in said supreme court his certain transcript of record and proceedings in the superior
2 court of Chicago, Cook County, State of Illinois, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
State of Illinois, County of Cook, ss:

Pleas before the honorable the judges of the superior court of Chicago, within and for the county of Cook and State of Illinois, at a regular term of said superior court of Chicago, begun and holden at the court-house in the city of Chicago, in said county and State, on the first Monday (being the fifth day) of July, in the year of our Lord one thousand eight hundred and sixty nine, and of the Independence of the United States of America the ninety-fourth. Present, the honorable Joseph E. Gary, chief justice of the superior court of Chicago; John A. Jameson, William A. Porter, judges; Charles H. Reed, prosecuting attorney; Gustav Fisher, sheriff of Cook County.

Attest: AUGUSTUS JACOBSON, *Clerk.*

Be it remembered that, heretofore, to wit, on the third day of July, in the year of our Lord one thousand eight hundred and fifty-four, there was filed in the clerk's office of the Cook County court of common pleas a certain bill of complaint originally filed in the Grun-
3 dy County circuit court, on the 29th December, 1853, which said bill, with the exhibits thereto attached, is in the words & figures as follows, to wit:

To the honorable Hugh Henderson, judge of the eleventh judicial circuit of the State of Illinois, in the circuit court of Grundy County, in chancery sitting:

Your orator, William Smith, of Boone County in said State, complaining, shows unto your honor that, on or about the first day of July, in the year of our Lord one thousand eight hundred and forty-eight, one Lewis P. Holmes, having then lately been enlisted as a soldier in the service of the United States in the war with Mexico, and then having lately been honorably discharged therefrom, and holding his certificate of such discharge, applied to one James Adsit, a defendant in this bill of complaint, at the city of Chicago, to procure from the proper Department at the city of Washington, to be issued to him, said Holmes, a land-warrant, under the act of Congress of the 11th Febru-

ary, 1847, for his services in said war; that thereupon the said Adsit undertook to procure for the said Holmes such land-warrant, and
4 made out the necessary affidavits & certificates for the said Holmes to sign to procure the same, and, at the same time, made out a power of attorney for him to sign, authorizing the assignment of such land-warrant to be issued to said Holmes under such application, but having blanks in the same not filled up at the time, for the date of its execution, the number and date of the land-warrant, and the person to execute the said power, which power of attorney, with said blanks not filled up, was, at the same time, with the affidavits and other papers above mentioned, executed by the said Lewis P. Holmes in the presence of Ch. B. Farwell & J. M. Adsit, as subscribing witnesses to the execution thereof, and acknowledged before J. B. F. Russell, notary public of Cook County, Illinois.

And your orator further shows unto your honor that the same James M. Adsit procured the said Holmes to sign and execute said power of attorney through fraud and misrepresentation to him as to its nature and contents; the said Holmes at the time supposing, from what was then said to him by said Adsit, that it was a paper necessary for him to execute in order to obtain said land-warrant, and without any design or in-
5 tention to give the said Adsit or any other person any power to sell and dispose of the same, and without at the time actually selling or disposing of his rights and interests to said land-warrant, and the land to be located under the same, to any person or persons whomsoever.

And your orator further shows unto your honor that the said power of attorney, with said blanks therein not filled up, was, by the said Lewis P. Holmes, executed and delivered to said Adsit before the land-warrant was issued to the said Holmes upon such application.

And your orator further shows unto your honor that soon after a land-warrant was issued to the said Lewis P. Holmes, for the location of one hundred and sixty acres of Government land for his services in the war with Mexico, in pursuance of said application, and was forwarded to the said James M. Adsit, who thereupon attached to the same the said power of attorney, and having filled up the blank for the number and date of the warrant, with the actual number & date thereof, and the person by whom said power was to be executed, with the name of
6 L. D. Hoard, and the date with the 30th day of August, 1848, did, on or about the 30th day of August, 1848, cause and procure the said L. D. Hoard, without any ratification of said power by said Holmes, as his attorney in fact, to assign and transfer the said land-warrant, in the presence of James Long and I. F. Wait, as subscribing witnesses to the execution thereof, by writing endorsed thereon, to the said James M. Adsit; and, on the fifth day of September, 1848, the said Adsit, as assignee of the said Holmes, located the said warrant on the west half of the southeast quarter, and the northeast quarter of the southeast quarter of section twelve, in township thirty-four north, of range six east, in the district of lands subject to sale at Chicago, Illinois, and situate in the county of Grundy, in said State; and that, on the first day of June, 1850, a patent was issued to the said James Adsit, as assignee of the said Lewis P. Holmes, for said lands, under said land-warrant and location.

And your orator further shows unto your honor, and so charges the facts to be, that, at the time the said power of attorney bears date, the said Lewis P. Holmes had not attained to his majority, and that he
7 was not twenty-one years of age until long after the entry of said

land by said Adsit under said land-warrant, and that he became of that age on or about the first day of October, in the year one thousand eight hundred and fifty.

And your orator further shows unto your honor that, on or about the 24th day of October, A. D. 1850, by deed of that date, the said Lewis P. Holmes conveyed the lands and premises above herein described to your orator, which was filed for record in the recorder's office of said Grundy County, on the 8th day of November, 1853, and is in possession of your orator, ready to be produced and proved as this court shall direct.

And your orator further shows unto your honor that the said James M. Adsit, by deed dated the sixth day of September, A. D. 1848, conveyed the southwest quarter of the southeast quarter of section twelve aforesaid to one Suel Wright, another defendant in this bill of complaint, who now is in possession of the same; and that the said Adsit did also, by deed dated the first day of May, 1849, convey the north half of the southeast quarter of section twelve aforesaid to James
8 Craig, who, by deed dated the 14th day of March, 1850, conveyed the same to William Craig, who, by deed dated the 21st day of December, 1850, conveyed the same to Patrick Rourk, another defendant in this bill of complaint, who, by himself or his tenants, is now in the possession of the same; and that Suel Wright, by mortgage dated April 14, 1853, hath mortgaged the said southwest quarter of the southeast quarter of section twelve aforesaid to the trustees of schoo of township thirty-four, range six, in said Grundy County, as by the said several deeds, or the records thereof now in the office of recorder of said county, reference thereto had, will more fully appear.

And your orator further shows unto your honor that, on or about the 20th day of December, A. D. 1853, your orator caused to be filed in the office of the Commissioner of the General Land-Office, at Washington, District of Columbia, an instrument of writing signed by said Lewis P. Holmes, with the certificate of acknowledgement thereof by said Holmes thereon endorsed, by which said Holmes claimed for himself, his heirs and assigns, the benefit of the location made under and by virtue of said land-warrant upon said lands.

9 And your orator further shows unto your honor that hereunto attached is a certified copy of the said land-warrant and papers accompanying the same, now on file in the said General Land-Office, hereby made a part of this bill of complaint, and to which for greater certainty your orator refers, marked "Exhibit B."

And your orator further shows unto your honor, and so charges the facts to be, as he is advised by his counsel, and verily believes, th in consequence of the obtaining of said power of attorney from said Lewis P. Holmes by the said James M. Adsit, under and by said fraudulent representations as to its purport and effect, and the fact that the said power was executed before the issuing of the said land-warrant, and that the said several blanks were therein left at the time of its execution, and that the said Lewis P. Holmes, at the time of executing the same, and until after the said land-warrant was located upon said land, was a minor under the age of twenty-one years, the said assignment to the said James M. Adsit thereof was a mere nullity, and did not in any way or manner affect or charge the said Lewis P. Holmes;
10 and that he is well entitled to claim the benefit of said location of said land-warrant, and hold the lands thereby entered and located to himself, his heirs, and assigns, in fee, for his and their own use and benefit; and to have a conveyance from the parties now holding

the legal title, to him, his heirs or assigns, and your orator, as such assignee of said Holmes, well entitled to all his rights in the premises.

And your orator further shows unto your honor that he has frequently and in a friendly manner applied to the said defendants for a release of their legal claims to said land to him, but all such reasonable requests the said defendants have invariably refused to comply with or neglected to pay any attention to the same. In tender consideration whereof, and forasmuch as your orator is remediless in the premises at and after the strict rules of the common law, and can only have relief in a court of equity, where matters of this sort are properly cognizable and relievable: To the end, therefore, that the said James M. Adsit, Suel Wright, Patrick Rourk, the trustees of schools of township thirty-four, range six, in said county, (who are combining and confederating with each
11 other, and other persons now unknown to your orator in the premises, but who, when discovered, your orator prays may be made parties to this bill,) may true, full, & perfect answer make to this bill, and that without oath, which is hereby waived; and that the said James M. Adsit may be decreed to have acquired the said lands and premises to and for the use and benefit of the said Lewis P. Holmes, his heirs and assigns, and that the said mesne conveyances to the said Suel Wright, Patrick Rourk, and the trustees of schools of township thirty-four, in range six, in said county, may be charged with the same trust, and they declared to hold and to have acquired the same for the use and benefit of said Lewis P. Holmes, his heirs and assigns, and that they may be decreed to release to your orator, as assignee of said Lewis P. Holmes, the said lands and the legal estate which they hold therein under said assignment & conveyances; and that an account may be taken from the filing of this bill of the rents and profits accruing from said land; and the said Suel Wright and Partrick Rourk severally decreed
12 to pay what may appear to be due for those tracts of the land aforesaid occupied by them respectively; and that the said defendants to this bill of complaint may be enjoined and restrained from setting up or claiming any right or title in and to said lands, under said land-warrant, adverse to your orator, and that such injunction be made perpetual; and for such other and further relief in the premises as to this court shall seem agreeable to equity & good conscience in the premises.

May it please your honor to grant to your orator process of summons issuing out of & under the seal of this court, to the sheriff of the proper counties, commanding him to summon the said James M. Adsit, Suel Wright, Patrick Rourk, and the trustees of schools of township thirty, in range six, in said Grundy County, defendants in this bill of complaint, to appear before this court on the first day of the next term thereof, to answer the said bill, and to stand to, abide by, and perform the order and decree of the court in the premises; and also process of injunction, enjoining & restraining said defendants until the fur-
13 ther order of the court, as hereinbefore prayed for. And your orator will ever pray, &c.

FARNSWORTH & BURGESS,
For Compt.

EXHIBIT B.

GENERAL LAND-OFFICE,
December 20th, 1853.

I, John Wilson, Commissioner of the General Land-Office, do hereby certify that the annexed is a true and literal exemplification of bounty-

land warrant certificate No. 23129, for 160 acres, issued under the act of February 11th, 1847, in the name of Lewis P. Holmes, and the accompanying papers from the files of this Office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed at the city of Washington on the day & year above written.

[L. S.]

JOHN WILSON,
Commissioner of the General Land-Office.

WAR DEPARTMENT,
Office of the Commissioner of Pensions.

It is hereby certified that the land-warrant No. 23129, for 160 acres, has been issued in the name of Lewis P. Holmes, late a private in Lieutenant Fullerton's detachment, Second Regiment Illinois Volun-
14 teers, under date of the eighteenth August, 1848, and will be deposited in the General Land-Office at the seat of Government. And that, pursuant to the provisions of the subjoined ninth section of the act of Congress, approved on the 11th day of February, 1847, entitled "An act to raise for a limited time an additional military force and for other purposes," this certificate of right to locate said warrant on any quarter-section of land subject to private entry will be received at any of the land-offices of the United States, under the regulations and restrictions set forth in the accompanying statement of the Commissioner of the General Land-Office; after the location of this certificate, it is to be surrendered to the General Land-Office, whence the patent will issue.

Given under my hand at the Pension-Office this 18th day of August, 1848.

J. L. EDWARDS,
Commissioner of Pensions.

LEWIS L. THOMAS,
Care of Hon. DAVID RUMSEY, Jr., M. C.

For value received, I, Lewis P. Holmes, do hereby sell and assign unto James M. Adsit all my right and title to the within certificate or
15 warrant No. 23129, for one hundred and sixty acres.

Witness my hand this 30th day of August, 1848.

LEWIS P. HOLMES,
By LEWIS D. HOARD,
His Attorney in Fact.

Attest:
JAS. LONG.
J. F. WAIT.

Acknowledged before me this 30th day of August, 1848.

[L. S.]

SAML. HOARD,
Clerk Cook Cir. Court Ills.

Land-warrant No. 23129.—Register & receiver No. 640.

LAND-OFFICE, CHICAGO, ILLINOIS,
September 5, 1848.

We hereby certify that the attached military-bounty land-warrant No. 23129 was on this day received at this office from James M. Adsit, of Cook County, State of Illinois.

W. M. JACKSON, *Register.*
THOS. DYER, *Receiver.*

I, James M. Adsit, of Cook County, State of Illinois, hereby locate the W. ½ of S. E. ¼ & the N. E. ¼ of the S. E. quarter of section No. twelve, in township No. 34, of range No. 6, in the district of lands subject to sale at the land-office at Chicago, Illinois, containing 120 acres, in satisfaction of the attached warrant, numbered 23129.

Witness my hand this 5th day of September, 1848.

16 Attest:

WM. M. JACKSON, *Register.*
THOS. DYER, *Receiver.*

LAND-OFFICE, CHICAGO, ILLINOIS,
November 1, 1848.

We hereby certify that the above location is correct, being in accordance with law and instructions.

THOS. DYER, *Receiver.*
WM. M. JACKSON, *Register.*

Know all men by these presents, that I, Lewis P. Holmes, a recruit in Lieut. H. Fullerton's detachment, Second Regiment of Illinois Volunteers, do hereby make, constitute, & appoint L. D. Hoard my true and lawful attorney, for me and in my name to sell at such price, and assign and transfer to such person he may deem right & proper, a certificate or land-warrant for 160 acres of land issued in my favor on the 18th day of August, 1848, under the act of Congress of the 11th February, 1847, and is No. 23129, hereby ratifying and confirming all my said attorney and agent may do in the premises, as full and effectually as if I had been personally present.

In witness whereof I have hereunto set my and affixed my seal this 30th day of August, A. D. 1848.

17 LEWIS P. HOLMES. [SEAL.]

Witness:
CH. B. FARWELL,
J. M. ADSIT.

Acknowledged before me this 30th day of August, A. D. 1848.

{ NOTARY PUBLIC, J. B. F. R., COOK COUNTY, ILLS. } J. B. F. RUSSELL, *Notary Public.*

I, Suel Wright, of Grundy County and State of Illinois, do hereby relinquish to the United States all my right and interest in the pre'm'tion I hold on the W. ½ of S.E. qr. and N.E. qr. of S.E. qr. of section 12, township 34, R. 6 east, in the district of lands subject to sale at Chicago.

Chicago, Sept. 5, 1848.

SUEL WRIGHT.

Witness:
DELOSS WRIGHT.

I, Deloss Wright, of Grundy County and State of Illinois, having examined the west half of southeast quarter and northeast quarter of southeast quarter of section No. twelve, in township 34 north, range No. 6 east, in the district of lands subject to sale at Chicago, Illinois, do solemnly swear that, from my own knowledge of the fact, after actual inspection of the said tract of land, on or about the 2d day of

18 September, 1848, there was not at that time an actual settlement

and cultivation upon any part of said land, nor was there any person or persons residing upon it; and I do verily believe that there is no actual settlement and cultivation, or any person or persons residing upon any part of said land at this time except a settlement and cultivation made by Sewel Wright, which is hereby relinquished to the United States; neither have I any interest in said location.

DELOSS WRIGHT.

Subscribed and sworn before me this 5th day of September, A. D. 184—

H. L. RUCKER,
Justice of the Peace.

(Endorsed on back of bill of complainant:) Filed December 29th, 1863. Geo. H. Kiersted, clk.

And afterwards, to wit, on the fifth day of July, A. D. 1854, James M. Adsit, Suel Wright, Patrick Rourk, and trustees of schools of township 30, range six, in Grundy County, by Messrs. Goodrich & Scoville, their solicitors, filed in said clerk's office their certain demurrer, which is in the words & figures as follows, to wit:

Cook Co. ct. common pleas.

JAMES M. ADSIT ET AL.
ads.
WILLIAM SMITH. } In chancery.

The joint and several demurrer of James M. Adsit, Suel Wright,
19 Patrick Rourk, & trustees of schools of township 30, in range six, in Grundy County, State of Illinois, defendants, to the bill of complaint of William Smith, complainant. These defendants, by protestation, not confessing or acknowledging all or any of the matters in and by the bill set forth and complained of to be true, in manner & form as the same are therein and thereby set forth and alleged, severally say they are advised that there is no matter or thing in the complainant's said bill of complaint contained, good and sufficient in law to call these defendants to account in this honorable court for the same; but that there is good cause of demurrer thereunto, and they do demur thereunto accordingly; and, for causes of demurrer say that the complainant's said bill of complaint, in case the same were true, which these defendants do in nowise admit, contains not any matter whereon this court can ground any decree, or give the complainant any relief or assistance against these defendants. Wherefore, and for divers other errors and defects in the complainant's said bill of complaint contained and appearing on the face thereof, these defendants do, as
20 aforesaid, demur in law thereunto, and pray judgment, &c.; and that they be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

GOODRICH & SCOVILLE,
Defts. Solrs.

And afterwards, to wit, on the twenty-fifth day of November, in the last aforesaid, (to wit, 1854,) the same being one of the days of the July vacation term of the Cook County court of common pleas, the following

among other proceedings were had in said court and entered of record, to wit:

WILLIAM SMITH *vs.* SUEL WRIGHT, PATRICK ROURK, JAMES M. Adsit, the trustees of schools of town. 33, R. 6, in Grundy County.	Bill.

This day comes the said complainant, by Farnsworth and Burgess, and the defendants, by Goodrich and Scoville, their solicitors, also come; and the said complainant confesses the defendants' demurrer to
21 said complainant's bill of complaint herein; and thereupon leave is given said complainant to file an amended bill of complaint herein.

And afterwards, to wit, on the 25th day of September, A. D. 1854, said complainant, by his solicitors aforesaid, filed in said clerk's office his certain amended bill; which is in words and figures as follows, to wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Cook County court of common pleas. In chancery.

WILLIAM SMITH, COMPL'T, *vs.* SUEL WRIGHT, PATRICK ROURK, JAMES M. Adsit, and the trustees of schools of township thirty, in range six, in Grundy County, def'ts.	Bill.—Change of venue from Grundy circuit court.

An amended bill of complaint filed in the above-entitled cause under an order of the Cook County court of common pleas for that purpose made.

Your orator, William Smith, of Boone County, in said State, complaining, shows unto your honor that one Lewis P. Holmes was regularly enlisted as a soldier in the service of the United States, in
22 the late war with Mexico, and having served therein was afterwards honorably discharged therefrom, and received a certificate of such, his service and discharge; and that under such, his service and discharge, he was entitled to the benefits and bounties provided in and by the act of Congress entitled "An act to raise for a limited time an additional military force, and for other purposes, approved on the 11th day of February, 1847;" and that being so entitled, and having in his possession his said discharge, he applied to one James M. Adsit, of the city of Chicago, in said State, a defendant in this bill of complaint, at said city, to procure for him, said Holmes, from the proper Department at the city of Washington, a land-warrant, under the ninth section of said act, for his services as aforesaid as a private in Lieutenant Fullerton's detachment, Second Regiment Illinois Volunteers.

And your orator further shows that thereupon the said James M. Adsit undertook to procure for said Holmes said land-warrant, and prepared and made out the necessary papers and affidavits
23 or statements for the said Holmes to sign and swear to for

that purpose, and at the same time made out a power of attorney for him to sign, authorizing the assignment of such land-warrant about to be issued under such application to said Holmes, but having in the same, at the time it was so signed, blank spaces for the date of its execution, the number and date of said land-warrant, and the name of the person to execute said power, not filled, which said power of attorney, with said blanks not filled up, was signed by said Holmes at the same time with the other papers and affidavits above mentioned, and purports to have been acknowledged before J. B. F. Russell, notary public of said Cook County, before whom said affidavits were made at the same time the same were made, and the said power is subscribed by Ch. Farwell and J. M. Adsit, as subscribing witnesses to the execution thereof.

And your orator further shows unto your honor that the said Lewis P. Holmes was entirely unacquainted with the papers necessary to be made out in order to obtain said land-warrant, and the said Adsit
24 represented himself at the time to said Holmes as perfectly familiar and well acquainted with all the forms and steps necessary to be taken in order to procure the same; and the said Holmes trusted in and relied upon him, exclusively, in the matter for that purpose and end; that the said James M. Adsit, when he had prepared the necessary papers for Holmes to execute, produced with them said power of attorney, and represented to said Holmes that the said power of attorney, in its then condition, was a paper necessary for him to execute to procure said land-warrant, either expressly by saying so, or producing it among other papers for him to execute, leaving him to believe from that circumstance that it was so necessary; and that the said Holmes did execute said paper believing it to be of that character, and not of the character and purport it actually was. And so your orator says that the said James M. Adsit, by fraud and misrepresentation and circumvention, procured said Holmes to sign said power of attorney.

25 And your orator further shows that the said Holmes did not then sell or dispose of said land-warrant or his right to the same, under said services and application to the said Adsit, or any other person, and that he signed and acknowledged said power of attorney without any knowledge of its tenor & effect, and without any design or intention on his part to give the said Adsit or any other person any power to sell or dispose of his rights under such bounty-land warrant, or the land that might be located thereunder, to any person whatever.

And your orator further shows unto your honor that the said power of attorney, with said blanks not filled up therein, was by the said Lewis P. Holmes signed and left in the possession of said Adsit before the land-warrant was issued to the said Holmes upon said application.

And your orator further shows unto your honor that, afterwards, and on or about the 18th day of August, A. D. 1848, a land-warrant was issued to the said Lewis P. Holmes for the location of one hundred and sixty acres of land of the United States for his services in the war in Mexico, in pursuance of said application, and the certificate of such issuing of such land-warrant was forwarded to and received by said Adsit, who thereupon attached to the same the said power of
26 attorney, and having filled up the blank for the number and date of the warrant, with the actual number, 23129, and date, August 18th, 1848, thereof, and the person by whom the said power should be executed, with the name of L. D. Hoard and the date of said power with that of the 30th day of August, 1848; and, on or about the 30th day of August, 1848, cause' and procure' the said L. D. Hoard, without

any ratification of said power by said Holmes and without his knowledge or consent, as his attorney in fact, to assign and transfer the said land-warrant or certificate so received by said Adsit as aforesaid to him, said Adsit, by writing endorsed thereon, and purporting to be executed in the presence of James Long & I. F. Wait, as subscribing witnesses to the execution of such assignment; and, on the fifth day of September, A. D. 1848, the said James M. Adsit located the said land-warrant at the land-office of the United States at Chicago, Illinois, on the west half of the southeast quarter and the northeast quarter of the southeast quarter of section twelve, (12,) in township thirty-four
27 (34) north, of range six (6) east, in the district of lands subject to sale at Chicago aforesaid, and situate in the county of Grundy, in said State; and that, on the first day of June, 1850, a patent was issued to the said James M. Adsit, as assignee of the said Lewis P. Holmes, for said lands under said land-warrant and location, a copy of which patent is hereto annexed, marked "Schedule A," and made a part of this amended bill of complaint.

And your orator further shows unto your honor, and so charges the fact to be, that, at the time said power of attorney bears date, the said Lewis P. Holmes had not attained to his majority, and that he was not twenty-one years of age until long after the entry of said land by said Adsit under said land-warrant, and that he became of that age on or about the first day of October, one thousand eight hundred and fifty.

And your orator further shows, and so charges the fact to be, that, shortly after said Adsit had sent said papers to procure such land-warrant, and about the time that the same should have been received by him in reply to such application, said Holmes applied to said
28 Adsit for his said land-warrant, but the said Adsit refused to let him have it, and then for the first time set up the claim that the same had been sold to him by said Holmes, and refused to give said Holmes any information as to where said land-warrant was or to whom it had been assigned, or what land had been located under it, though requested by said Holmes; and the said Holmes was unable for several years to ascertain the facts in regard to the location thereof.

And your orator further shows unto your honor that, afterwards, and after the said Lewis P. Holmes had become of age, and on or about the 24th of October, A. D. 1850, by deed of that date, the said Lewis P. Holmes conveyed the lands and premises above herein described to your orator, which said deed was filed for record in the recorder's office of said Grundy County on the 8th day of November, 1853, and is now in the possession of your orator, ready to be produced and proved as this court shall direct.

And your orator further shows unto your honor that the said James M. Adsit, by deed dated the sixth day of September, A. D. 1848,
29 conveyed the southwest quarter of the southeast quarter of section twelve aforesaid to one Suel Wright, another defendant in this bill of complaint, who now is in possession of the same.

And that the said Adsit did also, by deed dated the first day of May, 1849, convey the north half of the southeast quarter of section twelve aforesaid to James Craig, who, by deed dated the 21st day of December, 1850, conveyed the same to Patrick Rourk, another defendant in this bill of complaint, who, by himself or his tenants, is now in the possession of the same; and that said Suel Wright, by mortgage dated April 14th, 1853, hath mortgaged the said southwest quarter of the southeast quarter of section twelve aforesaid to the trustees of schools of township thirty-four, range six, in said Grundy County, to secure the payment of

money loaned by them to him, as by the said several deeds and mortgage now in possession or under the control of the parties claiming under them or the record thereof in the recorder's office of said Grundy County, reference being thereto had, will more fully & at large appear.

30 And your orator further shows unto your honor that, on or about the 20th day of December, 1853, your orator caused to be filed in the office of the Commissioner of the General Land-Office at Washington, District of Columbia, an instrument of writing signed by said Lewis P. Holmes, and duly acknowledged by him, of which acknowledgement a certificate was then thereon duly endorsed, by which said Holmes claimed for himself, his heirs & assigns, the benefit of the location made under & by virtue of said land-warrant upon said lands herein above described.

And your orator further shows unto your honor that there is filed in this cause, with the original bill of complaint herein, a certified copy of the said land-warrant and papers accompanying the same, now on file in the General Land-Office at Washington, marked "Exhibit B," hereby made part of this amended bill of complaint, and to which for greater certainty your orator prays reference may be had.

And your orator further shows unto your honor, and so charges the facts to be, that the said power of attorney was obtained by

31 the said James M. Adsit from the said Lewis P. Holmes through fraud and circumvention, in this, that the said Adsit, at the time of the signing the same by said Holmes, from his conduct, leading him to believe that it was a paper necessary for the purpose of obtaining such land-warrant, and not stating to him that it authorized the sale and transfer thereof when received by said Adsit, he, the said Lewis P. Holmes, relying upon such conduct of said Adsit that that was its character, effect, & purpose, and not examining the instrument himself, signed the same and subsequently acknowledged the execution thereof.

And your orator further shows unto your honor, and so charges the fact to be, that the said J. B. F. Russell, before whom said power of attorney purports to have been acknowledged, at the instance and request of the said Adsit, left blank places in his certificate of such acknowledgment, thereunto attached, of the time when the same was taken, and that said Adsit afterwards caused said blanks in said certificate to be filled up with the date of the 30th day of August, A. D. 1848; and your orator expressly charges that the said Lewis

32 P. Holmes did not, on that day, nor on any day after his said application to said Adsit to procure said land, ever appear before said J. B. F. Russell and acknowledge said power of attorney as his act and deed, and that, if such acknowledgment ever was at any time made by said Holmes, it was done through the fraud and circumvention of said Adsit, and in entire ignorance on the part of said Holmes of the tenor, purport, and effect thereof, and without any intention to make or execute any such instrument as is hereinbefore charged.

And your orator further shows unto your honor, as he is advised by his counsel and verily believes, that, in consequence of the obtaining of said power of attorney from the said Lewis P. Holmes, by such fraud & circumvention and such fraudulent misrepresentation as to its purport and effect on the part of said Adsit, as aforesaid, the same is, by the law of the land, a mere nullity, conferred no power or authority upon said Adsit, and that the said several persons hereinabove named who

33 have purchased said premises, or acquired liens thereon, have so purchased & acquired, charged by the law of the land with notice of the fact of such power being such nullity.

And your orator further shows unto your honor that the fact of the said several blanks having been left in said power and certificate of acknowledgment and subsequently filled, is evident from an inspection of said instrument on its face, and that by the exercise of ordinary diligence on the part of said persons so purchasing and acquiring liens on said premises, as aforesaid, the facts in regard thereto could have been ascertained; and that the making of any such sale of said land-warrant before the issuing thereof, or the execution of any power of attorney authorizing the sale thereof before the issuing thereof is by law of Congress declared a nullity. And so your orator charges that even if the said Lewis P. Holmes did, before the issuing of said land-warrant, sell to the said James M. Adsit his rights and interests to said bounty-land under said act of Congress, and did, knowingly and intentionally, execute said power of attorney authorizing the sale and transfer thereof by any
34 person whose name might thereafter be inserted in the blank left for that purpose, yet such sale and said power of attorney were, under said act of Congress, a mere nullity, conferred no right or authority upon said Adsit, and he, and no other person can, as against the said Lewis P. Holmes and his assignees subsequent thereto, claim any right or title to said land-warrant and the land located under it adverse to the said Holmes.

And your orator further shows that the said Lewis P. Holmes, being at the execution of said power of attorney and the location of said land-warrant, a minor under the age of twenty-one years, the said power of attorney is, as to him, a mere and absolute nullity. And the said James M. Adsit and all other persons being chargeable by the law of the land with notice of the fact of the non-age of the said Lewis P. Holmes, all assignments of said land-warrant or of the land located under the same by virtue of or claiming through said power of attorney, are equal nullities and confer no rights as against the said Lewis P. Holmes and his lawful assignees claiming under assignments made after attaining his majority.

35 And your orator further shows unto your honor that the said James M. Adsit, by reason of the said several premises, received, acquired, held, and located said land-warrant as the trustee of and for said Lewis P. Holmes, and the said Holmes was well entitled at any time thereafter, and before transferring and conveying the same, to demand from him, said Adsit, and all persons acquiring title from and under him, to convey the same to him until the making of said conveyance to your orator, and that your orator upon the making of said conveyance acquired and now holds all the rights of said Holmes in the premises.

And your orator further shows unto your honor that the said patent so issued to the said James M. Adsit, as aforesaid, upon the face of it recites that he is the assignee of Lewis P. Holmes, under a power of attorney to L. D. Hoard, from said Holmes, and that all of the parties defendant to this bill of complaint are thereby expressly charged with notice of the fact that said Adsit derived his title to said land-warrant under said power of attorney, and not by a direct conveyance from said Lewis P. Holmes, executed by him in person.

36 And your orator further shows unto your honor, that he has frequently and in a friendly manner applied to said defendants for a release of said land, and quiet and peaceable surrender of the possession thereof, to him, but said defendants have invariable refused to comply with such his reasonable request. In tender consideration whereof, and forasmuch as your orator is remediless in the premises at

and after the strict rules of the common law, and can only have relief in a court of equity where matters of this sort are properly cognizable and relievable:

To the end, therefore, that the said James M. Adsit, Suel Wright, Patrick Rourk, the trustees of schools of township thirty-four, range six, in said county, (who are combining & confederating in the premises with each other, and with other persons now unknown to your orator, but who when discovered your orator prays may be made parties to this bill,) may true, full, & perfect answer make to this bill and the matters and things herein alleged, and that without oath, which is hereby waived, and that the said James M. Adsit may be decreed to have acquired the said lands and premises to and for the use and benefit of the
37 said Lewis P. Holmes, his heirs and assigns, and that the said mesne conveyances to the said Suel Wright, Patrick Rourk, and the trustees of schools of township thirty-four, in range six, in said Grundy County, may be charged with the same trust, and they declared to hold and to have acquired the same for the use and benefit of the said Lewis P. Holmes, his heirs and assigns, and that they may be decreed to release to your orator, as assignee of the said Lewis P. Holmes, the said lands, and the estate which they severally, upon the fact of the said conveyance, hold therein, and surrender the possession of said premises to your orator; and that an account may be taken, from the filing of the original bill of complaint in this cause, of the rents and profits accruing from said land, and the said Suel Wright & Patrick Rourk severally decreed to pay what may appear to be due for those tracts of land occupied by them respectively; and that the said defendants to this bill of complaint may be enjoined and restrained from setting up or claiming any right or title in and to said lands adverse to your orator, and that such injunction be made perpetual; and for such other and further relief in the
38 premises as to this court shall seem meet and agreeable to equity and good conscience in the premises, may it please you honor to grant to your orator process of summons, issuing out of and under the seal of this court, to the sheriff of the proper counties, commanding him to summon the said James M. Adsit, Suel Wright, Patrick Rourk, and the trustees of schools of township thirty, in range six, in said Grundy County, defendants in this amended bill of complaint, to appear and answer this bill, and to stand to, abide by, and perform the order and decree of the court in the premises; and also process of injunction enjoining & restraining said defendants until the further order of the court, as hereinbefore prayed for, and your orator will ever pray, &c.

FARNSWORTH & BURGESS,
For Compt.

SCHEDULE A.—(Copy patent.)

The United States of America to all to whom these presents shall come, greeting:

Know ye, that in pursuance of an act of Congress, entitled "An act to raise for a limited time an additional military force, and for
39 other purposes," approved February 11, 1847, Lewis P. Holmes, late a private in Lieutenant Fullerton's detachment, Second Regiment, Illinois Volunteers, having deposited in the General Land-Office a warrant in his favor, numbered 23,129, for 160 acres, there is therefore granted by the United States unto James M. Adsit, assignee of said Lewis P. Holmes by L. D. Hoard, his attorney in fact, and to his heirs,

the west half of the southeast quarter and the northeast quarter of the southeast quarter of section twelve, in township thirty-four north, of range six east, in the district of lands subject to sale at Chicago, Illinois, containing one hundred and twenty acres, according to the official plat of the survey of said land returned to the General Land-Office by the surveyor-general, which said tracts have been located in satisfaction of the above-mentioned warrant, in pursuance of the act of Congress above mentioned, approved February 11, 1847; to have and to hold the said parts of said section of land, with the appurtenances thereof, unto the said James M. Adsit, his heirs and assigns forever.

In testimony whereof, I, Millard Fillmore, President of the
40 United States, have caused these letters to be made patent, and the seal of the General Land-Office to be hereunto affixed. Given under my hand at the city of Washington, the first day of June, in the year of our Lord one thousand eight hundred and fifty, and of the Independence of the United States the seventy-sixth.

[L. S.] By the President: MILLARD FILLMORE.

And afterwards, to wit, on the second day of January, A. D. 1855, the same being one of the days of the January vacation term of said Cook County court of common pleas, the following, among other proceedings, were had in said court and entered of record, to wit:

WILLIAM SMITH *vs.* SUEL WRIGHT, PATRICK ROURKE, JAMES M. ADSIT, the trustees of schools of town. 53, R. 6, Grundy County.	In chancery.—Bill.

This day comes the said complainant, by Farnsworth & Burgess, his solicitors, and on his motion it is ordered that the defendants herein file their answer in this cause by Friday morning next.

41 And afterwards, to wit, on the eighth day of January, in the last aforesaid, said defendants, by their solicitors aforesaid, filed in said clerk's office their certain demurrer, which is in the words and figures as follows, to wit:

The joint and several demurrer of James M. Asdit, Suel Wright, Patrick Rourk, and the trustees of schools of township thirty, in range six, in Grundy County, State of Illinois, defendants, to the amended bill of complaint of William Smith, complainant, filed in the Cook County court of common pleas.

These defendants, by protestation not confessing or acknowledging all or any of the matters in and by the said amended bill set forth and complained of, to be true in manner and form as the same are therein and thereby set forth and alleged, severally say, they are advised there is no matter or thing in the complainant's said amended bill of complaint contained, good and sufficient in law to call these defendants to account in this honorable court for the same, but that there is good cause of demurrer thereunto, and they do demur thereunto accordingly,
42 and for causes of demurrer say that the complainant's said bill of complaint, in case the same were true, which these defendants in nowise admit, contains not any matter whereon this court can ground any decree or give the complainant any relief or assistance against these defendants.

And further, that it does not appear from said amended bill, nor is it therein stated, what papers or affidavits or statements, for said Holmes to swear to, were prepared or made out by said defendant Adsit. That it does not appear from said amended bill, nor is it therein stated, what fraudulent act the said defendant, Adsit, did in or about procuring the said Holmes to execute said power of attorney. That the alleged fraudulent conduct of said defendant Adsit, in procuring the execution of said power of attorney by said Holmes, is laid in the alternative. That it does not appear from said amended bill what act, if any, of said defendant Adsit led said Holmes to believe that said power of attorney was necessary for the procuring of said land-warrant; nor does it appear
43 that said Holmes executed said power of attorney believing it to be of that character, from any act or conduct of said Adsit. That it does not appear from said amended bill that said *amended bill* Holmes could not read, or had not any opportunity to inform himself of the contents, tenor, and effect of said power of attorney before signing the same, or that he did sign or acknowledge the same without so doing, on account of any conduct of said Adsit. Wherefore, and for divers other errors and defects in the complainant's said amended bill of complaint contained and appearing on the face thereof, these defendants do, as aforesaid, demur in law thereunto, and crave the judgment of this hon. court, whether they are compellable or ought to make any answer thereunto otherwise than as aforesaid, and these defendants humbly pray to be hence dismissed, with their costs & charges in this behalf most wrongfully sustained.

GOODRICH & SCOVILLE,
Defendants' Solicitors.

And afterwards, to wit, on the ninth day of January, A. D. 1855, said defendants, Suel Wright and Patrick Rourk, by their solicitors aforesaid, filed in said clerk's office their certain answer, in the
44 words and figures as follows, to wit:

The joint and several answers of Suel Wright & Patrick Rourk, two of the defendants, to the amended bill of complaint, filed in the Cook County court of common pleas by William Smith, complainant.

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors & insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, answering say, that they have no knowledge, except from said bill of complaint, as to the services of said Holmes as a soldier, or his discharge or certificate of discharge, and they have no knowledge, except from said bill, of any transactions of said Holmes with said defendants, or of any undertakings, fraudulent conduct, misrepresentations, or circumvention on the part of said Adsit; and they have no knowledge as to any of the matters & things alleged or charged in said bill of complaint, ex-
45 cept what is derived therefrom up to and including the allegation of the conveyance of said lands and premises by said Holmes to said complainant, and therefore these defendants neither admit nor deny any of the said allegations or charges, but leave the said complainant to prove the same.

And the said defendant, Suel Wright, further severally answering, says that he admits that the said defendant, James M. Adsit, by deed,

dated on or about the sixth day of September, 1848, conveyed the S. W. ¼ of the S. E. ¼ of sect. 12, mentioned in said bill of complaint, to this defendant, who is now in possession thereof; and this defendant says that he purchased the same of said Adsit for a good and valuable and adequate consideration, to wit, for the sum of fifty dollars, which sum he paid said Adsit therefor; and he further says that his said purchase of said lot of land of said Adsit was made in good faith, and without any knowledge or information, on the part of this defendant, of any transactions between said Holmes and said Adsit, and that all the information this defendant had about the title to said lot of land
46 was that said Adsit had located the same under and by virtue of a land-warrant, and held the same by patent from the United States.

And this defendant, Suel Wright, further answering, admits that he has mortgaged said premises, as is charged in said bill of complaint; and he, further answering, denies that he purchased said land, as aforesaid, charged by any law with notice of the power of attorney, in said bill mentioned, being a nullity.

And the defendant, Patrick Rourk, further severally answering, says he admits that said defendant Adsit did, by deed, dated at or about the time charged in said bill, convey the N. ½ of the S. E. ¼ of sec. 12, therein mentioned, to said James Craig, who conveyed the same to this defendant, as is charged in said bill; and this defendant says that he is informed and believes, and so avers the fact to be, that said Craig made a bona-fide purchase of said land from said Adsit, for the consideration of $100 to him paid by said Craig therefor, and without any knowledge on the part of said Craig of any transactions between said Holmes and said Adsit, or of any fraud, circumvention, or misrepresentation
47 on the part of said Adsit. And this defendant further says that he purchased said land of said Craig for a good and valuable consideration to him paid therefor, and without any knowledge or information, on the part of this defendant, of any transaction between said Holmes and said Adsit, and that all the information this defendant had as to the title of said lot of land was that said Adsit entered the same, and derived his title from the Government and conveyed to said Craig as aforesaid. And he, further answering, denies that he purchased said premises as aforesaid, charged by any law of the land with notice of the power of attorney, in said bill mentioned, being a nullity. And these defendants, further severally answering, say that they deny all knowledge of the fact of said several blanks having been left in said power of attorney and certificate of acknowledgment and subsequently filled up, is evident from an inspection of said instrument on its face, or that by the exercise of ordinary diligence on the part of said persons so purchasing and acquiring liens on said premises, as is charged in said
48 bill, the facts in regard thereto could have been ascertained, and they deny all knowledge of the same; and these defendants say that it is a matter for this hon. court to determine whether or not the making of any such sale of said land-warrant, as is charged in said bill, or the execution of a power of attorney, *and* is therein charged, is a nullity; and they further say that it is a question for the court to determine whether or not such sale and said power of attorney conferred any right or authority upon said Adsit, and whether he or any other person can, as against the said Lewis P. Holmes, or his assignees, subsequent thereto, claim any right or title to said land-warrant, or the land located under it, adverse to said Holmes. And these defendants, further answering, say that all the matters of law alleged in said bill of complaint, are questions for this hon. court to determine. All which

matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

49 SUEL WRIGHT,
PATRICK ROURKE,
Dfts.

GOODRICH & SCOVILLE, *Solrs.*

And on the same day and year last aforesaid, to wit, January 9th, 1855, said James M. Adsit, by his solicitors aforesaid, filed in said clerk's office his certain answer, which is in the words and figures as follows, to wit:

The separate answer of James M. Adsit, one of the defendants, to the amended bill of complaint, filed in the Cook County court of common pleas by William Smith, complainant.

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, answering says that he has no knowledge, except from said bill of complaint and the papers and land-warrant hereinafter mentioned, whether or not one Lewis P. Holmes, mentioned in said bill, was
50 enlisted as a soldier as therein charged, or whether he served or was discharged as is alleged in said bill, or received a certificate of such services and discharge, or was entitled thereunder to the benefits and bounties provided in and by the said act of Congress, as is charged in said bill of complaint.

And this defendant, further answering, says he denies that said Holmes, having in possession his said discharge, applied to this defendant to procure for him a land-warrant, as is charged in said bill of complaint, and he denies that he undertook to procure for said Holmes said land-warrant, or ever undertook to procure any land-warrant for him; and this defendant avers the fact to be that said Holmes came to the office of this defendant, in the city of Chicago, and represented himself to this defendant to be a discharged soldier from the United States Army, and offered to sell to this defendant a writing which purported to be his discharge from service as such soldier, and the land-warrant that might be obtained under and by virtue of said discharge, and urged this defendant to purchase the same of him, but this de-
51 fendant refused to do so at that time, and said Holmes thereupon departed from the office of this deponent. After being gone several hours said Holmes returned to the office of this defendant, and told this defendant that he could not sell said discharge to any one, and again urged this defendant to buy the same and to make him an offer therefor. And this defendant did thereupon offer to pay him forty dollars for the said discharge and the land-warrant that should be procured upon the same, if any might be obtained thereon, and assume & pay the expenses of procuring the same, and which offer the said Holmes then and there accepted and agreed to, and did then and there sell to this defendant said discharge and the land-warrant that might be issued thereon. And this defendant says that said Holmes was an entire stranger to him, and that under the circumstances he was unwilling to pay any greater price therefor.

And this defendant, further answering, admits that he, this defendant, made out the proper and necessary papers and affidavits for the said Holmes to sign and swear to, for that purpose, and at the same time a power of attorney for him to sign, authorizing the
52 assignment of such land-warrant about to be issued on said application to said Holmes, and that blank spaces for the date of its execution, the number and date of said land-warrant, and the name of the person to execute said power not filled up, and which said power with such blanks was signed by said Holmes at the same time with the other papers & affidavits above mentioned, and purported to be and was acknowledged before J. B. F. Russell, a notary public of said county of Cook, before whom said affidavits were made, and at the same time the same were read and subscribed by the witnesses named. But this defendant denies the same were made to enable said Adsit to procure said warrant for said Holmes, or for the benefit of any one but himself, or that this defendant undertook to procure said warrant for said Holmes or at his request, but avers the fact to be that, in pursuance of the agreement with said Holmes as aforesaid, that said papers were made out for the purpose of obtaining said warrant for this defendant for his own benefit and that of no one else. And that said papers were made out in the ordinary way in which said papers
53 were made out on a sale of rights to warrants, and that said Holmes authorized the filling up of said blanks in said papers in the way in which it might be necessary to enable said Adsit or his assignee to avail himself of said papers in order to secure to himself or his assignee the benefit of such land-warrant when the same should be issued. And this defendant avers that on the delivery of such papers he paid to said Holmes the said sum of forty dollars in full for the right and title of him, said Holmes, to said discharge, and the land-warrant which might be issued thereon.

This defendant, further answering, says he has no knowledge, information, or belief whether said Holmes was ignorant of the papers necessary to be made out in order to obtain said land-warrant, but he denies that he made to said Holmes the representations as charged in said bill; that he was perfectly familiar and well acquainted with the form and steps necessary to be taken in order to procure said warrant or any thing similar thereto. And this defendant, further answering, says he denies that, on the production of said power of attorney for said
54 Holmes to execute with said papers, he represented to him that it was necessary to be executed in that condition in order to procure said land-warrant or anything to that purport or effect either expressly or impliedly, or that he did anything to lead said Holmes so to believe, as is mutually charged in said bill, but this defendant avers the fact to be that he did produce said power of attorney in the condition charged, but stated to said Holmes that it was necessary for him to execute the same for the purpose of transferring said land-warrant to him, this defendant, or his assignee when the same should be issued from the proper department, and for no other purpose whatever. And this defendant denies the fraud and misrepresentation charged in said bill in that behalf, and that the execution of said power was procured by the means and under the circumstances therein charged. And this defendant, further answering, denies that the said Holmes did not sell or dispose of said land-warrant, or his right to the same under said services, on application to this defendant, and that he signed or acknowledged said power of attorney without any knowledge of its tenor or effect, and without any design or intention on his part to give

said Adsit or any other person any power to sell or dispose of his rights under such bounty-land, or the land that might be located under the same, to any person whatever; but, on the contrary, this defendant says that he did sell and dispose of the same to him, this defendant, for the sum of forty dollars, by this defendant then and there paid by this defendant to said Holmes.

And this defendant further answering says, that he admits that said power of attorney with said blanks not filled up therein, was delivered by the said Holmes, signed, to this defendant before said land-warrant was issued to said Holmes.

And this defendant further answering says, he admits that afterwards, on or about the 18th of August, 1848, a land-warrant was issued to said Holmes, for the location of one hundred and sixty acres of land of the United States, as charged in said bill, and that the certificate of such issuing was forwarded to this defendant, and that he thereupon attached to the same said power of attorney, and filled up the blanks for the number and date of said warrant, with the actual number 23129, and dated August 18, 1848, and inserted the name of L. P. Hoard, as the person to execute the same, and assign and transfer said land-warrant and without any further ratification or knowledge of said Holmes; but this defendant denies it was done without the assent of said Holmes; but this defendant avers that, at the time of the execution thereof, the said Holmes assented and authorized the filling up of the same, and the insertion of such person as he might choose to act as attorney, to transfer and assign said land-warrant. And this defendant admits the assignment, under said power of attorney, so filled up to him by said L. D. Hoard as the attorney in fact of said Holmes in the presence of said James Long and I. F. Waite as subscribing witnesses.

And this defendant further answering, admits that on or about the 5th day of September, 1848, he located the said land-warrant at the land-office of the United States, at Chicago, on the west half of the southeast quarter, and the northeast quarter of the southeast quarter of section twelve, in township thirty-four north, of range six east, the district of lands subject to sale at Chicago, and situated in the county of Grundy, in the State of Illinois, and that on the first day June, 1850, patent was issued to this defendant as assignee of said Lewis P. Holmes for said lands, under said land-warrant and location. This defendant, further answering, says he denies that, at the time said power of attorney bears date, the said Lewis P. Holmes had not arrived to his majority and was not twenty-one years of age until long after the entry of said land by said Adsit under said land-warrant, and that he became of that age on or about the first day of October, 1850. And this defendant, further answering, says that he denies that, at about the time said land-warrant should have been received by this defendant, said Holmes called upon him for said land-warrant, but he admits that, long after he had located said land with the said warrant, and had sold the same as hereinafter set forth, said Holmes did call upon him and claimed the same, or some interest in the same, but what claim or on what ground the same was set up this defendant did not learn. And this defendant, further answering, says he has no knowledge, except from said bill of complaint, that said Holmes, at the time specified in said bill, or at any other time, did, by deed or otherwise, convey or undertake to convey the lands and premises above described to the said complainant, or whether said deed is recorded as in said bill alleged, and leaves the complainant to prove the same if he deems it material to do so.

And this defendant, further answering, says that he did, by deed of the date in said bill alleged, sell and convey the southwest quarter of the southeast quarter of section twelve to Suel Wright, for the consideration of fifty dollars, by said Wright then to this defendant in hand paid. And this defendant, further answering, says that on or about the first day of May, 1849, he did, by deed of that date, sell and convey to one James Craig the north half of the southeast quarter of section twelve, aforesaid, for the consideration of one hundred dollars by said Craig then to this defendant in hand paid; and he further says that he has understood that said Craig did convey the same to said Patrick Rourk, but has no personal knowledge of the same. He also says that he has been informed that said Suel Wright mortgaged the land, so conveyed to him, as charged in said bill of complaint, but he has no personal knowledge of the same.

59 And this defendant, further answering, says he has no knowledge, except from said bill of complaint, whether said complainant, at the time charged in said bill, or at any other time, caused to be filed, in the office of the Commissioner of the General Land-Office at Washington, the papers in said bill charged so to have been filed. And this defendant, further answering, says that he cannot say whether the said Exhibit B is a correct copy of said land-warrant or not, and leaves the complainant to prove the same. And this defendant, further answering, says that he denies that the said power of attorney was obtained by him from said Holmes through fraud and circumvention; and specially that this defendant, at the time of signing the same by said Holmes, did nothing to mislead said Holmes, and avers that he did state to said Holmes said power of attorney was necessary and authorized the sale and transfer of said warrant; that said Holmes believed this, defendant cannot say, but he avers he did nothing charged in said bill to mislead him in relation thereto; and he denies the charges in said bill contained in that behalf made and alleged. And this defendant, further answering, says he admits that, at the time said

60 J. B. F. Russell took the acknowledgment of said power of attorney, left blanks in said power of attorney, left blank places in his certificate of acknowledgment of the time when the same was taken, as was usual in all such instruments for such purposes, and that this defendant afterwards caused the same to be dated as charged in said bill; and he admits that said Holmes did not afterwards appear before said Russell and re-acknowledge the same; but this defendant says it was understood between him and said Holmes that such blanks might be afterwards filled up, as they were, and that there was no fraud on his part, nor ignorance in relation thereto on the part of said Holmes.

And this defendant, further answering, says he submits the questions of law made and declared in said bill and the inferences from the evidence to the opinion of the court. And the said defendant denies that he located or held said land in trust for said Holmes, but avers he purchased the said warrant and located the same for his own use and benefit solely. And the said defendant further says he supposes the recitals charged as contained in said patent are truly set forth, but the

61 the law arising thereon, and the legal inferences therefrom, he leaves to the court. This defendant denies all combination charged in said bill, without that, any other thing or matter material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true; all which matters and things this defendant is ready to aver, maintain, prove, & as this honorable court shall

direct, and humbly prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

JAMES M. ADSIT.

GOODRICH & SCOVILLE,
Defts.' Solrs.

And afterwards, to wit, on the 10th day of January, in the year last aforesaid, to wit, 1855, said complainant, by his solicitors aforesaid, filed in said clerk's office his certain replications, which are in the words and figures as follows, to wit:

The replication of William Smith, complainant, to the joint and several answers of Suel Wright and Patrick Rourk, defendants.

This repliant, saving and reserving unto himself all and all
62 manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

FARNSWORTH & BURGESS,
Sols. for Compt.

The replication of William Smith, complainant, to the several and separate answer of James M. Adsit, defendant.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be
63 answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

FARNSWORTH & BURGESS,
Solrs. for Compt.

And on the 10th day of January, A. D. 1855, the same being one of the days of the January vacation term of said court, the following, among other proceedings, were had in said court and entered of record, to wit:

WILLIAM SMITH
vs.
SUEL WRIGHT ET AL. } Bill.

This day comes the defendants, by Goodrich and Scoville, their solicitors, and withdraw their demurrer to the bill of complaint herein,
64 and leave is thereupon given them to file their answer herein.

And afterwards, to wit, on the 17th day of February, 1855, the same being one of the days of the February term of said court, the following, among other proceedings, were had in said court and entered of record, to wit:

WILLIAM SMITH
vs.
SUEL WRIGHT ET AL. } In chancery. Bill.

This day come the said parties, by their solicitors, and by consent the complainant files amendments to his bill of complaint herein.

And afterwards, to wit, on the seventeenth day of February, in the year last aforesaid, said complainant, by his solicitors aforesaid, filed in said clerk's office his certain amendments to bill and stipulation, which are in words and figures as follows, to wit:

In the Cook County court of common pleas.

WILLIAM SMITH
vs.
SUEL WRIGHT ET AL. } In chancery. Bill.

65 Amendments, in folio 31, insert: "And your orator further shows that the said defendants sometimes pretend that the said James M. Adsit, at the time of making said papers for the purpose of procuring said land-warrant, paid to the said Lewis P. Holmes the sum of thirty dollars, or other some such sum of money for the assignment & transfer of his right to said land-warrant to him, said Adsit, the contrary whereof your orator charges to be the fact."

In folio 35, insert: "Hereby offering to pay over or allow to said Adsit or such of the parties to this suit any sum of money that may have been paid by said Adsit to said Holmes in the premises."

It is hereby stipulated that the above amendments may be inserted in the bill as amended, as of the time of filing the same, so as to require no further answer.

GOODRICH & SCOVILLE,
Defts.' Solrs.
FARNSWORTH & BURGESS.

And afterwards, to wit, on the thirteenth day of July, A. D. 1868, there was filed in the clerk's office of the superior court of Chi-
66 cago (formerly Cook County court of common pleas) a certain stipulation transferring suit to Cook Co. court of common pleas, stipulation changing venue and appearance for defts., and transcript transferring cause from Grundy County, which are in the words and figures as follows, to wit:

In the circuit court of Grundy County.

WILLIAM SMITH
vs.
JAMES M. ADSIT, SUEL WRIGHT, PATRICK ROURK, et al. } In chancery.

It is hereby stipulated and agreed that this suit and all the papers herein be transferred into the Cook County court of common pleas of

Cook County, State of Illinois, without prejudice to either party, the same to be disposed of in said Cook County court of common pleas, as if originally brought therein.

March 9, 1854.

FARNSWORTH & BURGESS,
Complt.'s Solrs.
GOODRICH & SCOVILLE,
Solrs. for all the Defts.

(Endorsed on back: Filed March 10, 1854. Geo. H. Kiersted, clk.)

In the Grundy circuit court. In chy:

WILLIAM SMITH, COMPLAINANT,
vs.
JAMES M. ADSIT, SUEL WRIGHT, PATRICK ROURK, and the trustees of schools of township thirty, in range six, in Grundy County, defendants. } Bill.

67

It is hereby stipulated that the venue in this cause be changed to the Cook County court of common pleas, and that the proper orders be entered of record in said Grundy circuit court for that purpose. Dated February 1, 1854.

FARNSWORTH & BURGESS,
For Compt.
GOODRICH & SCOVILLE,
Sols. for Defts.

In the Grundy circuit court. In chancery.

WILLIAM SMITH, COMPLAINANT,
vs.
JAMES M. ADSIT, SUEL WRIGHT, PATRICK ROURK, and the trustees of schools in township thirty, range six, in Grundy County, defendants. } Bill.

We do hereby enter the appearance of all of said defendants in this suit.

Dated February 1, 1854.

GOODRICH & SCOVILLE,
Sols. for Defts.

UNITED STATES OF AMERICA,
State of Illinois, Grundy County, ss:

68 In circuit court, March term, A. D. 1854.

Pleas before the honorable Hugh Henderson, judge of the eleventh judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Grundy County, in the State aforesaid, and at a term thereof begun and held at the court-house in Morris, in said county, on Monday the twenty-seventh day of March, in the year of our Lord one thousand eight hundred and fifty-four, and of the Independence of the said United States the seventy-ninth.

Present, honorable Hugh Henderson, judge of the 11th judicial circuit of the State of Illinois; S. W. Bowen, State's attorney; J. B. Jones, sheriff.

Attest:

GEO. H. KIERSTED, *Clerk.*

Be it known that afterwards, to wit, on the said 27th day of March, in thes aid year of our Lord one thousand eight hundred and fifty-four, and the said court being then duly organized, and judicially sitting for the transaction of business, the following proceedings among others were had and entered of record by said court, in the words and figures following, to wit:

69 "WILLIAM SMITH *vs.* SEWELL WRIGHT ET AL. } 13. In chancery

"In accordance with the stipulation on file, it is ordered that all papers on file pertaining to this suit be sent to the Cook County court of common pleas."

STATE OF ILLINOIS,
Grundy County, ss:

I, John B. Davidson, clerk of the circuit court within and for said county and State, do certify the within and foregoing to be a full, true, and complete transcript of the records of the proceedings of the Grundy County circuit court, had and entered of record by the said court in the cause therein entitled, as appears from said records now remaining in my office. I further certify that the papers herewith transmitted, numbered from "1" to "7" inclusive, are all the papers, after diligent search, that I can find remaining in my office that appertain to or form a part of the records of said court in said cause.

Witness my hand and the seal of said court, at the city of Morris, in said county and State, this 7th day of April, A. D. 1868.

70 [L. S.] JOHN B. DAVIDSON, *Clerk.*

STATE OF ILLINOIS,
Grundy County, ss:

The people of the State of Illinois to our sheriff of said county, greeting:

We command you that you summon Suel Wright, Patrick Rourk, James M. Adsit, and the trustees of schools of township 34, in range 6, in Grundy County, if they be found in your county, personally to be and appear before our circuit court of our said county on the first day of the next term thereof, to be holden at the court-house in Morris, in said county, on the 4th Monday of March next, to answer the matters and things contained in a certain bill in chancery, filed by William Smith, complainant, against them, the said defendants, to the damage of the said plaintiff, as is said, and you have then there this writ.

Witness, George H. Kiersted, clerk of our said court, and the seal thereof, hereto affixed, in said county, this 11th day of January, A. D. 1854.

[L. S.] GEO. H. KIERSTED, *Clerk.*

(Endorsement:) 2. In chancery. William Smith vs. Sewel
71 Wright, James M. Adsit, and others. Sum's to defts. I have served by reading the within summons to the within-named Suel Wright, Patrick Rourk, and by leaving copy to the same. Miles, 80; serving, 1.00; & return, 10—$1.90. J. B. Jones, sheriff. H. Brebie, dep. Filed July 13th, 1868. A. Jacobson, clk.

And afterwards, to wit, on the 16th day of April, 1869, the same being one of the days of the April term of the superior court of Chicago,

the following among other proceedings were had in said court and entered of record, to wit:

WILLIAM SMITH
vs.
SUEL WRIGHT, PATRICK ROURK, JAMES M. ADSIT, the trustees of schools of township thirty, in range six, in Grundy County. } Bill.

And now this day comes again the said complainant, by W. T. Burgess, esquire, his solicitor, and also comes Messrs. King, Scott, and Payson, and withdraw their appearance as solicitors herein for the said defendants, Patrick Rourk and the trustees of schools of township thirty, in range six, in Grundy County; and thereupon
72 comes Thomas Clowry, esquire, and enters his appearance herein for the said defendant Patrick Rourk.

And afterwards, to wit, on the 30th day of June, 1869, the same being one of the days of the June term of said court, the following among other proceedings were had in said court, and entered of record, to wit:

WILLIAM SMITH
vs.
SUEL WRIGHT ET AL.

And now this day comes the said complainant, by W. T. Burgess, esquire, his solicitor, and the said defendant Patrick Rourk, by Thomas Clowry, esq., and the said defendant James M. Adsit, by Messrs. King, Scott & Payson, his solicitors, also comes; whereupon, on motion of the respective solicitors for the said two last-named defendants, it is ordered by the court, the official reporters of this court be, and they are hereby, employed to take the evidence adduced upon the hearing of this cause.

And afterwards, to wit, on the nineteenth day of July, in the year 1869, the same being one of the days of the July term of said
73 court, the following among other proceedings were had therein and entered of record, to wit:

WILLIAM SMITH
vs.
JAMES M. ADSIT, SUEL WRIGHT, PATRICK ROURK, and the trustees of schools of township (34) north, range six (6) east, in Grundy County. } Decree.

And now at this day come the parties, by their counsel, and this cause having been, under the order of the supreme court of this State reversing the decree heretofore rendered herein and remanding the cause upon writ of error sued out by said complainant to said decree, heard by this court at a former term of this court, and the court now here being fully advised in the premises, doth find that the said James M. Adsit acquired the title to the lands and premises described in the bill of complaint as the north half of the southeast quarter (eighty acres)

and the southwest quarter of the southeast quarter, (forty acres,) section twelve, (12,) in township thirty-four (34) north, range six (6) east, in Grundy County, in trust for said Lewis P. Holmes, the assignor of said complainant, but that the said Suel Wright and Patrick Rourk and said trustees of schools purchased said lands and premises in good
74 faith from said Adsit, and received a conveyance thereof in fee from him for a valuable consideration fully paid therefor, without notice of the equities of said Holmes and of said complainant claiming under him; and that therefore said lands and premises cannot be charged in their hands with said equities, and that said Adsit should account for the value thereof, and the rents, issues, and profits thereof, to said complainant; and upon taking such account it appearing that the said lands and premises are now worth the sum of four thousand two hundred dollars, that the rents, issues, and profits thereof for the fifteen years that have elapsed since the filing of this bill have been of the average value of the forty acres at the rate of one dollar and sixty-five cents per acre, and the eighty acres at the rate of one dollar and thirty cents per acre, amounting to the sum of two thousand five hundred and fifty dollars, and that the interest that has accrued thereon during said time amounts to the sum of one thousand one hundred and twenty-two dollars, which three items amount to the sum of seven thousand eight hundred and seventy-two dollars, ($7,872,) and that the taxes paid on said lands
75 amount to the sum of one hundred and seventy-three dollars and five cents on the eighty acres, and ninety-eight dollars and ninety-three cents on the forty acres, and the interest on the eighty acre taxes to $70.45, and on the forty acres to 40.03, in all, to sum of one hundred and ten dollars and forty-eight cents; and that the improvements placed thereon amount to the sum of three hundred dollars in value on the forty acres, and the interest thereon to the sum of two hundred and seventy dollars; and that said Adsit paid said Holmes the sum of forty dollars, when he, Adsit, received from said Holmes his certificate of discharge, and the interest thereon amount' to fifty dollars and fifty cents; which sums, in the aggregate, amount to ten hundred and forty-two dollars and eighty-six cents, ($1,042.86,) and should be deducted from said sum of seven thousand eight hundred and seventy-two dollars, ($7,872,) leaving a balance of six thousand eight hundred and twenty-nine dollars and fourteen cents, which should be paid by said Adsit to said complainant.

It is therefore ordered, and adjudged, and decreed that the said Adsit, within thirty days from the date of this decree, pay to the said
76 complainant, or his solicitor for him, the said sum of six thousand ($6,829.14) eight hundred and twenty-nine dollars and fourteen cents, with interest from this date, and the costs of this suit to be taxed, and that execution issue thereon as upon a judgment at law, without further order, or the complainant be at liberty to apply to this court for further relief touching the execution of this decree, and that the bill of complaint be dismissed as to the said Suel Wright, Patrick Rourk, and trustees of schools; and said defendant, James M. Adsit, excepts to said decree and prays an appeal therefrom to the supreme court of this State, which is allowed on his filing bond in the penal sum of eight thousand dollars, conditioned as is by law required, with surety to be approved by the court, in thirty days.

And on the 9th day of July, A. D. 1869, there was filed in said clerk's office a certain certificate of proof, in the words and figures as follows, to wit:

In the supreme court of Chicago, of July term, A. D. 1869. In chancery.

STATE OF ILLINOIS,
County of Cook, ss:

77 WILLIAM SMITH
vs.
JAMES M. ADSIT, SUEL WRIGHT, PATRICK Rourk, and the trustees of schools of township 34 N., R. 6 E., Grundy County. } Bill.

Be it remembered that on the 30th day of June, A. D. 1869, this cause came on for hearing upon the order of the supreme court reversing the former decree of this court and remanding the case to this court, a certified copy of which order is as follows:

At a supreme court begun and held at Ottawa, on Tuesday, the eighth day of September, in the year of our Lord one thousand eight hundred and sixty-eight, within and for the third grand division of the State of Illinois—

Present, Sidney Breese, chief-justice.
Present, Charles B. Lawrence, associate justice.
" Pinkney H. Walker, associate justice.

WILLIAM SMITH
vs.
JAMES M. ADSIT, SEWELL RIGHT, PATRICK Rourk, and the trustees of schools of township 36 N., R. 4 east, in Grundy County. } Error to superior court of Chicago.

78 On this day came again the said parties, and the court, having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, are of opinion that in the record and proceedings aforesaid and in the rendition of the judgment aforesaid there is manifest error. Therefore, it is considered by the court that for that error and others in the record and proceedings aforesaid the judgment of the superior court of Chicago in this behalf rendered be reversed, annulled, set aside, and wholly for nothing esteemed, and that this cause be remanded to the superior court of Chicago for such other and further proceedings as to law and justice shall appertain. And it is further considered by the court that the said appellant recover of and from the said appellee his costs by him in this behalf expended, and that he have execution therefor.

I, Woodbury M. Taylor, clerk of the supreme court of the State of Illinois, do hereby certify that the foregoing is a true copy of the
79 final order of the said supreme court in the above-entitled cause, of record in my office.

In testimony whereof I have set my hand and affixed the seal of the said supreme court, at Ottawa, this third day of February, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.]

W. M. TAYLOR,
Clerk of the Supreme Court.

The complainant appearing by his counsel, W. T. Burgess, esq., and the defendants Adsit & Wright by their counsel, W. H. King, esq., and

the defendant Rourk by his counsel, · Clowry, esq., the complainant thereupon having read the order of this court of the 13 day of July, 1868, and the order then entered as of the 7th day of January, 1858, and read and submitted to the court as evidence upon this hearing, the evidence as therein contained and set out, (which order is as follows:)

WILLIAM SMITH *vs.* SUEL WRIGHT, PATRICK ROURK, JAMES M. Adsit, and the trustees of schools of township thirty-four, in range six, in Grundy County.	Bill.

80 And now at this day comes the complainant, by his solicitor, W. T. Burgess, and the defendants, by their solicitor, W. H. King, and on reading and filing the affidavits of William T. Burgess, Grant Goodrich, and W. H. King, it is, on motion of said complainant, ordered that an order be entered in this cause nunc pro tunc as of the seventh day of January, 1858, as follows, viz:

WILLIAM SMITH *vs.* SUEL WRIGHT, PATRICK ROURK, JAMES M. Adsit, and the trustees of schools of township thirty-four, in range six, in Grundy County.	Bill. Change of venue from Grundy County.

And now at this day come the parties, by their solicitors, the complainant by W. T. Burgess, esq., and the defendant by Grant Goodrich, esq., and this cause now came on to be heard on the bill as amended, answers, replications, and proofs, as follows, viz: The complainant introduced—

1st. The stipulation of the parties filed in this cause Nov. 12, 1855.

2nd. The patent issued to James M. Adsit, dated June 1st, 1850, set out in Exhibit A, filed with the bill in this cause, as amended.

81 3d. Exhibit B, filed with the original bill in this cause Dec. 29, 1853.

4th. The letter of John Wilson, dated the 1st day of April, 1853, addressed to Fuller & Burgess.

5th. The depositions of Anthony Holmes and Sarah Holmes in this cause, opened and filed April 23d, 1855.

6th. The release of Lewis P. Holmes to William Smith, dated April 9th, 1855.

7th. William T. Burgess was sworn in open court, and testified that since the taking of the deposition of said Holmes in this cause before D. C. Brattie, esq., a justice of the peace in this county, and now on file in this cause, the said Holmes had executed and delivered in his presence the above-named release.

8th. The parties stipulated that said release should have the same effect as if executed and delivered before the taking of said deposition.

9th. The deposition of said Lewis P. Holmes in this cause, opened and filed April 10, 1856.

10th. Deed from Lewis P. Holmes to William Smith, recorded in the recorder's office of Grundy County, in book H, page 567, and the certificate of acknowledgement and record indorsed.

82 And thereupon, after hearing the arguments of counsel, took the case under advisement.

WILLIAM SMITH
vs.
SUEL WRIGHT, PATRICK ROURK, JAMES M. ADSIT, and the trustees of schools of township thirty-six north, range 6 east, in Grundy County. } Bill.

This day come the parties by their solicitors, and on motion of complainant, and on inspection of the record, it is ordered that the entry made in this cause of the 11th June, 1866, (Book 19, p. 370,) so far as it recites a hearing of the cause at that time by this court, is erroneous, and should be amended in that respect. It is therefore ordered that the said order be amended and be now entered nunc pro tunc as follows, viz: This day comes the complainant by his solicitor, Burgess, and this cause having been submitted to the court for hearing at a former term and taken under advisement, it is now ordered that, upon said hearing and pleadings and proof in the cause, the bill in this cause be
83 dismissed at the costs of complainant; to which decree the complainant then and there excepted.

In the Cook County court common pleas, in chancery.

WILLIAM SMITH
vs.
SUEL WRIGHT, PATRICK ROURK, JAMES M. ADSIT, an' the trustees of schools of township thirty, in range six, in Grundy County, defendants. } Bill.

It is admitted by the parties to this suit—

First. That Exhibit A, filed in this cause with the bill as amended, is a true copy of the patent mentioned in the bill, and may be read in lieu of the original, should that not be produced.

Second. That a caveat was on the 20th day of December, 1853, filed in the General Land-Office, at Washington, as stated in the bill.

FARNSWORTH & BURGESS,
For Compt.

GRANT GOODRICH,
Atty. for Defts.

No. land-warrant is 23129; date, Aug. 18, 1848. "Lewis P. Holmes, private in Lieutenant Fullerton's detachment, Second Regiment Ills. Volunteers."

GENERAL LAND-OFFICE, *April 1st*, 1853.

SIRS: In reply to your letter of the 26th ultimo, in relation to a land-warrant issued to Lewis P. Holmes, I have to inform you that
84 said warrant was located on the 5 September, 1848, by James M. Adsit, of Cook County, Illinois, on the W. ½ SE. ¼, & NE. ¼ SE. ¼, 12, 34, 6, in the district of lands subject to sale at Chicago, Ills.; that a patent was issued in his name (as assignee) June 1, 1850, and sent to the register of the above land-office for delivery. Said warrant purports to have been assigned by virtue of a power of attorney given to L. D. Hoard on the 30th day of August, 1848, in the presence of Ch. B. Farwell and J. M. Adsit, as subscribing witnesses, and acknowledged before J. B. F. Russell, a notary public. The assignment purports to

have been made upon the same day, in the presence of James Long and J. F. Wait, and acknowledged before Saml. Hoard, clerk of Cook Co. court, Ills.

Very respectfully, your obt. servt.,

JOHN WILSON,
Commissioner.

Messrs. FULLER & BURGESS,
Belvidere, Illinois.

Caption of commissioner.

Int. 1st. What is your name, age, residence, and occupation?

Ans. My name is Arthur Holmes. I am fifty-four years old; reside in the town of Columbus, Columbia County, State of Wisconsin; my occupation is farming.

85 Int. 2. Do you know the parties to this suit, or any of them; if so, which?

Ans. I do not know any of them.

Int. 3. Do you know one Lewis P. Holmes, and what relation is he to you, and where does he now reside?

Ans. I know Lewis P. Holmes; he is my son; he resides at Garden Prairie, Boone County, Illinois; he is at this time attending school at the commercial college in Chicago, Illinois.

Int. 4. Where and when was the said Lewis P. Holmes born?

Ans. He was born in the town of Greenville, Green County, State of New York, on the 21st day of May, A. D. 1828.

5th int. State what you know as to the fact of said Lewis P. Holmes having served in the late war of the United States with Mexico; and, if so, in what capacity?

Ans. I know nothing about his serving in the Mexican war of my own knowledge, only from hearsay and letter. It is my belief that he enlisted in the Mexican war at Chicago, and went from there to Jefferson Barracks; do not know in what capacity he served.

6th int. Do you know any other thing material upon the hearing of this cause? If so, declare the same.

86 Ans. I know nothing more relative to this matter. And further this deponent saith not.

ARTHUR HOLMES.

Subscribed and sworn to before me this 18th day of April, A. D. 1855.

R. W. CHADBOURN,
Justice of the Peace and Commissioner appointed by the Cook County Court of Common Pleas of Cook Co., Ill., to take the above Deposition.

Inter'ogations propounded to the said Sarah Holmes, a witness produced and sworn as aforesaid on the part of the said William Smith, and her answers thereto, as follows:

Interogation first. What is your name, age, residence, and occupation?

Answer. My name is Sarah Holmes; my age is fifty years; my residence is in the town of Columbus, Columbia County, State of Wisconsin; occupation, housekeeping.

Int. 2. Do you know the parties to this suit, or any of them; if so, which?

Ans. I do not know any of them.

Int. 3. Do you know one Lewis P. Holmes, and what relation is he to you; where does he now reside?

Ans. I know Lewis P. Holmes; he is my son; he resides at
87 Garden Prairie, Boone County, Ills., but is now attending a school in Chicago.

Int. 4. When & where was the said Lewis P. Holmes born?

Ans. Lewis P. Holmes was born at the town of Greenville, Green County, State of New York, on the 21st day of May, A. D. 1828.

Int. 5. State what you know as to the fact of said Lewis P. Holmes having served in the late war of the United States with Mexico; and, if so, in what capacity?

Ans. I know nothing about his serving in the Mexican war, only from hearsay; know not in what capacity he served.

Int. 6. Do you know any other matter or thing material upon the hearing of this cause? If so, declare the same.

Ans. I know nothing more relative to this matter. And further this deponent saith not.

SARAH HOLMES.

Subscribed and sworn to before me this 18 day of April, A. D. 1855.

R. W. CHADBOURN,
Justice of the Peace & Commissioner Appointed by the County Court of Common Pleas of Cook County, State of Illinois, to take this Deposition.

Commissioner's certificate.

CHICAGO, *April* 9, 1855.

In consideration of the sum of one dollar to me paid by Wil-
88 liam Smith, I, Lewis P. Holmes, do hereby release unto said Smith, his heirs and assigns, all trusts, equities, or rights, whether resulting, implied, or otherwise howsoever to me belonging or existing, or to be implied in my favor, growing out of the conveyance of the west half of the southeast quarter and the northeast quarter of the southeast quarter of section twelve, (12,) in township thirty-four (34) north, of range six east, of the 3d p. m., in the district of lands subject to sale at Dixon, Illinois, to said Smith by me by deed dated the 24th day of October, A. D. 1850, or which I am in any manner entitled to claim and demand, or now or hereafter may hold therein against him for or by reason of any act or thing whatsoever.

Witness my hand and seal.

LEWIS P. HOLMES. [SEAL.]

Signed sealed and delivered in presence of—
W. J. BURGESS.

Caption of commissioner.

In the Cook County court of common pleas. In chancery.

WILLIAM SMITH, COMPLT.,
vs.
SUEL WRIGHT, PATRICK ROURK, JAMES M. ADSIT, and the trustees of schools of township thirty, in range six, Grundy County, defendants.

Bill. Change of venue from Grundy circuit court.

89 Deposition of Lewis P. Holmes, taken by consent of parties, on the 10th day of April, 1855, between the hours of nine in the morning and nine in the afternoon, before D. C. Brattie, justice of the peace in and for the county of Cook, and State of Illinois, to be read in evidence in a certain cause now pending in the Cook County court of common pleas, wherein William Smith is complainant and Suel Wright and others are defendants, on the part of said complt.

LEWIS P. HOLMES, a witness produced, sworn, and examined on the part of the complt., deposes and says, in answer to—

1st int. What is your name, age, occupation, and place of residence?

Answer. My name is Lewis P. Holmes; age is twenty-seven years; occupation a farmer, and reside at Garden Prairie, in Boone County, Illinois.

2d int. Do you know the parties to this suit, or either of them; and how long have you so known them?

Answer. I am acquainted with Mr. Smith; I have known him about two years. Wright I have seen, but have no acquaintance with him. I believe I have seen Mr. Adsit, though I am not personally acquainted with him. I don't know that I would know him if I should meet
90 him in the street. The first time I ever saw Mr. Adsit was on the 5th day of July, 1848. I saw him several times that year, and two or three times in '49. I have since till this winter, when I saw him talking with Mr. Burgess.

3d int. Did you ever serve in the war of the United States with Mexico? If so, in what capacity, and about what time?

Answer. I was enlisted in the 2d Regiment of Illinois Volunteers; I served in the neighborhood of three or four months; it was in the year 1848.

4th int. Did you receive a certificate of discharge from such service?

Answer. I did.

5th int. Did you leave with said James M. Adsit said certificate of discharge? If so, state the agreement, if any, between you and Adsit concerning the same. What papers, if any, you executed touching the *the* same, or your rights to bounty-land under it, and for what purpose. State fully all the details and circumstances attending or growing thereout, and the time when and the place where they occurred, and who were present beside yourself and Adsit.

(Objected to.)

Answer. I did leave with said Adsit said certificate of discharge. At the time I came out of the service up to Chicago, I got out of
91 money; I went to Mr. Adsit and requested him to buy my warrant of me. He refused to do so. I asked him then to let me employ him to get my land-warrant under my certificate of discharge, if he would let me have some money on it to get home with, which he

finally consented to do, and which I told him I would repay him when I got my warrant. He then requested me to make out a power of attorney for him to get the warrant, which I did; but the import of the writing I did not know, and do not know at the present time, for the reason that I did not read the article. These are all the papers that I recollect of making at that time. I am not certain but I made an affidavit of my identity, age, and name. I went to the clerk's office and made oath to a paper. He gave me a check for between thirty & forty dollars. He said he thought it would take two or three month' to get the warrant. I remember nothing more, that I told him I would return him the money when he got the warrant. This was in the fore part of July, 1848, at a place he called his office, on Clark st., in the city of Chicago. There was present, beside Adsit and myself, a man I did not know.

6th int. Did you at any time afterwards call on said Adsit for
92 the said land-warrant? If so, when and where; what offers to and demands on him did you then make; and who, if any, were present beside yourself and him?

Answer. Some time in the month of August, 1845, I called on him for the warrant at his office, and demanded the land-warrant. He said that he had no warrant for me. I told him I had the money to pay him, and also for getting the warrant. He said that he never had done any business for me. There was a young fellow by the name of Halifax with me. I don't know where said Halifax is now. I think there were none others in the office besides us three.

(Defendants' counsel objects to the whole testimony of witness.)

Cross-examined:

1st cr. int. Do you know the land in controversy in this suit?

Answer. I don't know it any more than I have been on the land.

2nd cr. int. Do you know James L. Loop, an attorney at Rockford? If so, did you have any negotiations with him for the sale of the land in controversy?

Answer. I don't know that I ever did.

3d cr. int. Did you, with Mr. Burgess, the counsel for the complainant, have any negotiations in regard to the sale of said land?

93 Answer. I don't think I have.

4th cr. int. Did you ever sell said land; and if so, to whom; or convey the same?

Answer. I never sold the land to any one; I conveyed it to Mr. Smith.

5th cr. int. Did he not pay you any consideration for such conveyance?

Answer. He did not.

6th cr. int. For what purpose did you convey said land to the complainant?

Answer. For the purpose that some one might get the justice of the case.

7th cr. int. Is said complainant to have any part of said land if it is recovered in this suit; and if so, how much?

Answer. There was no bargain made about it.

8th cr. int. Was he to prosecute this suit for the land at his own expense and without compensation; and if not, who was to pay the expenses?

Answer. He was to prosecute the suit at his own expense.

9th cr. int. How was it to be divided in case he recovered; was he to reconvey the whole to you or only a part?

Answer. There was no bargain made about it.

10th cr. int. What the understanding between you?

Answer. I don't know that I can answer that question. I have said that there was no bargain or understanding that I know of.

94 11th cr. int. Did you request him to take the deed for the land, or did he solicit it of you?

Answer. I did not request him to take the deed; he merely said that he would take it and prosecute the suit.

12th cr. int. Did he give you any receipt or writing in relation to it at that time or any other?

Answer. No, sir; he did not.

13th cr. int. How came he to offer to take a deed of the land and prosecute the suit?

Answer. I can't tell you, for I did not know his reason.

14th cr. int. Had you no conversation with him about it before you made the deed?

Answer. I don't know that you can call it "about it." I was telling him how I had lost my warrant, or supposed I had lost it.

15th cr. int. Was this all the conversation you had with him about it before the conveyance? If not, state the whole.

Answer. There was no more conversation about than that he said, "Give me the land, and I will prosecute the suit."

16th cr. int. Did you go with him to Mr. Burgess to employ him to prosecute this suit?

Answer. No, sir; I did not.

17th cr. int. Has he to your knowledge given any person any writing in regard to the disposition of the land in case it should be recovered?

Answer. No, sir.

18th cr. int. What part of the land do you expect to receive in case of its recovery?

95 Answer. My expectations are very small. I don't expect to get any of it.

19th cr. int. What relation is said complainant to you?

Answer. I do not know that he is any relation to me.

20th cr. int. Where did your father and mother live at the time you were here on your way home in July, 1848?

Answer. They were living at Antioch, Lake County, Illinois, between fifty and sixty miles from Chicago.

21st cr. int. What time did you enlist in the service?

Answer. I enlisted the latter part of March or fore part of April, 1848.

22d cr. int. When did you go to see the land in controversy, and how did you learn on what land the warrant had been located?

Answer. I think it was in June, 1853, that I went down on the land. I got my information from a little slip of land that came from Washington, on which was a description of the land.

23d cr. int. Was this before or after the conveyance to the complainant?

Answer. It was before.

24th cr. int. Was not you advised that you could not be a witness in a suit for the land, unless you conveyed it; and if so, by whom?

(Objected to.)

Answer. I was not.

25th cr. int. Did you know you could not?

Answer. I expect I did.

96 26th cr. int. Why did you go to see the land, and at whose request?

Answer. I went there because I wanted to see the land. I think if

any one requested me to go and see the land, Mr. Burgess requested me to go and see it; but I don't think that any one requested me to go.

27th cr. int. Did Mr. Burgess tell you to convey the land or anything to that purport?

Answer. No, sir.

28th cr. int. Did you consult Mr. Burgess in relation to your claim to the land before you conveyed it?

Answer. Yes, sir.

29th cr. int. Did you make any bargain with him about prosecuting a suit for it?

Answer. I don't think I did make much of a bargain about it; I don't think there was any stated or stipulated bargain about it; I merely went to him for counsel about writing to Washington.

30th cr. int. How and how much was he to be paid for prosecuting this suit?

Answer. I don't know that there was any bargain or amount specified.

31st cr. int. Did you employ him to prosecute this suit, and if so, when?

Answer. I did not.

32d cr. int. Is your father still living, and have you brothers of age?

Answer. My father and two brothers of age were living the last I heard from them.

33d cr. int. Do you know your own age, except from the statement of your parents?

97 Answer. I know it from my parents and relatives.

34th cr. int. Do you know C. N. Holden, and was he present at the time you gave your certifictae of discharge to Adsit?

Answer. I don't know him. I could not say that he was there.

Re-examined:

6th int. Did he deliver to said Adsit any papers or writings touching your right to bounty-land for your said services, or leave with him any papers signed or sworn to by you touching the same or the land-warrant that might be issued to you, at any time other than the time alluded to in your answer to the 4th direct interrogatory? If so, when and what were they?

Answer. I have not.

7th int. Did you at any time afterwards see any of the papers then executed by you, or do any act or thing, or cause any act or thing to be done, touching or concerning the same? If so, when and what?

Answer. I have not.

8th int. Did you, after said Adsit refused to deliver you said warrant, endeavor to find out where the same was, or on what land the same had been located; and if so, what did you do and when?

Answer. I went to see Mr. Wentworth to get him to examine the records at Washington and see if any warrant had been issued for me,

98 and see when it had been entered. This was about the time Mr. Wentworth was going to Washington. I received two letters from him, which have been lost. He stated he could obtain no information in reference to it, except that the warrant had been issued. He advised me to wait till the warrant was returned. It was in January or February, 1853, that I applied to Fuller & Burgess, of Belvidere, to write to the Department at Washington in reference to the warrant. They got a reply which gave me the information alluded to in the cross-examination.

LEWIS T. HOLMES.

STATE OF ILLINOIS,
County of Cook, ss:

I, D. C. Brattie, justice of the peace in and for said county, do hereby certify that the foregoing deposition was taken before me by consent of parties on the tenth day of April, 1855, at my office, in the city of Chicago; that before the commencement of said examination the said witness was by me duly sworn to testify to the whole truth touching his knowledge of the matters in controversy in a certain cause now pending in the Cook County court of com. pleas, wherein William Smith is
99 complt. and Suel Wright and others are defts., so far as he should be interrogated; that the several interrogatories and cross-interrogatories, and his answers thereto, were reduced to writing by me, and by the said witness sworn to and signed at the time and place of taking the same.

D. C. BRATTIE, *J. P.*

This indenture, made this twenty-fourth day of October, in the year of our Lord one thousand eight hundred and fifty, between Lewis P. Holmes, of Belvidere, county of Boone, and State of Illinois, party of the first part, and William Smith, of the same county and State aforesaid, party of the second part, witnesseth: That the said party of the first part, for and in consideration of six hundred dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, has remised, released, sold, conveyed, and quit-claimed, and by these presents does remise, release, sell, convey, and quit-claim, unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand which the said party of the first part has in and to the following-described lot, piece, or parcel of land, to wit: the west half of the south-
100 east quarter and the northeast quarter of the southeast quarter of section twelve, township thirty-four (34) north, range six (6) east of the third principal meridian, lying and being in the county of Grundy and State of Illinois, to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hands and seals the day and year first above written.

LEWIS P. HOLMES. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN R. BOYD.

STATE OF ILLINOIS,
County of Stephenson, ss:

Be it remembered that on the 29th day of October, A. D. 1853, before me, the subscriber, one of the notaries public in and for the town of Freeport, in said county, personally appeared John R. Boyd; and it is satisfactorily proven to me that said John R. Boyd is the indi-
101 vidual whose name is subscribed to the within deed as a subscribing witness of the execution thereof by the oath of William F. Disher, of said county, a competent and credible witness, for that purpose by me duly sworn; that the said John R. Boyd, after being duly

sworn, deposed and said that he is personally acquainted with Lewis P. Holmes, whose name appears subscribed to said deed as grantor, and knows him to be the real person who executed the same; and that he subscribed his name as a witness thereto in the presence and at the request of said Lewis P. Holmes, which, to me, is satisfactory proof of the due execution thereof by the said Lewis P. Holmes.

In testimony whereof I have hereunto set my hand and affixed my notarial seal at Freeport the day and year aforesaid.

[L. S.] CHAS. A. CLARK, *N. P.*

(Endorsed on back:) 304. Lewis P. Holmes to William Smith; quit-claim deed; State of Illinois, Grundy County; filed for record Nov. 8, 1853, and recorded in Book H, page 567. Geo. H. Kiersted, recorder.

The defendants' counsel objected to the reading of the letter of John Wilson, but the court allowed the same to be read as evidence,
102 of the fact that such a letter had been received, to which the defendants excepted then and there.

Defendants' counsel objected also to the reading of the deed from Lewis P. Holmes to complainant, dated April 9, 1855, which the court overruled, and defts. then and there excepted.

The complainant thereupon, upon the question of the rents and profits of the land in question, read in evidence the depositions of Oliver Wilder, John Cody, and Elam C. Sawyer, taken, and on file in this cause, as follows:

In the superior court of Chicago. In chancery.

WILLIAM SMITH
vs.
SUEL WRIGHT, PATRICK ROURK, JAMES M. Adsit, and the trustees of schools of township thirty-four north, range six east, in Grundy County.

STATE OF ILLINOIS,
Grundy County:

Deposition of Oliver Wilder, John Cody, and Elam C. Sawyer, taken on the part of the plaintiff, in the above-entitled cause, before Colquhuon Grant, master in chancery, in the circuit court of said Grundy County, on the 6th day of April, A. D., 1869, at the office of E. San-
103 ford, esq., at the city of Morris, in said Grundy County, by agreement of parties. In presence of E. Sanford, esq., solicitor for the plaintiff, and Charles Turner, esq., solicitor for defendant, James M. Adsit.

COLQ'N GRANT,
Master in Chancery.

OLIVER WILDER, being first duly sworn, was interrogated and deposed as follows:

Int. 1. State your name, age, occupation, and place of residence.

Ans. Oliver Wilder; thirty-one years of age; farmer; residence in the town of Nettle Creek, Grundy County, in the northeast part of said town.

Int. 2. How near to section 12, in said town 34 north, range 6 east, of 3d p. m.?

Ans. On the section adjoining it on the west.

Int. 3. How many years have you been acquainted with the north half of the southeast quarter and the southwest quarter of the southeast quarter of section 12?

Ans. I have lived near it for fourteen years.

Int. 4. What improvements were there on it when you first knew it?

Ans. A small house, some little fence on the south side; the house has been moved away since then, and a few fruit-trees; there was a little brook on the west part of the north 80.

104 Int. 5. State what the annual rent and profits of the said 120 acres, in your opinion, would be worth per acre since 1853 to the present time.

Ans. I should think about $2.00 per acre.

Cross-examination:

Int. 1. Do you mean to be understood that in 1853 said premises were worth $240 per year rental?

Ans. I don't think it was for that year. In that year it would not rent for as much as years. About 1856 land rented pretty well. Since that time it dropped some for 2 or 3 years. After that, till now, land has rented for considerable more. It averages now $3.00 to $3½.

Int. 2. Taking the 80-acre tract, has there been any time within the last fourteen years that the same, in the condition it has been, would have rented for $2.00 or $3.00 per acre cash rent?

Ans. Yes, sir.

Int. 3. For what years would it have rented for that?

Ans. For last year, and the year before; for the five preceding years I think it would have rented for $2.00; from 1856 up to 1861 I think it would have rented for very nearly that, about $1.75. From 1853 to 1856 it would been worth $1.00.

Int. 4. How much of this 80 is improved, and when was it broke; and how much of the 40, and when was it broke?

105 Ans. The 40 acre is pretty much all broke, except about 8 acres. Somewhere about ten years ago there was, perhaps, ten acres of the 40 broke; since then it has been broken from time, till now it is about all broke, except 8 acres. I am not so much acquainted with the 80 as with the 40 acre tract. Can't state definitely about the breaking on that.

Int. 4. What is the character of this 80-acre tract?

Ans. Some of it is very low and wet land; the rest is not very high.

Int. 6. Could you not, during the years that you have named, rent places having comfortable houses and considerable improvements and land under plow, in that vicinity, at the prices you have named?

Ans. Could not.

Int. 7. Could you not last year, and the year before, hire an 80-acre tract of land with from 50 to 70 acres of it broke, at from $3.00 to $3½ per acre in the town of Nettle Creek, in that vicinity?

Ans. Yes.

Int. 8. Could you not rent land of this last description, from 1861 to 1866, at about $2.00 and $2½ per acre?

Ans. There was not any land rented there except for shares. I presume it could have been got for that rent in cash.

Int. 9. Do you remember the section on which you live?

Ans. I do.

106 Int. 10. Did you ever rent to others, or hire youself, land at a cash rent?

Ans. Never.

Direct resumed.

Int. 1. State what, in your opinion, the grass-land alone has been worth annually since 1856.

Ans. About a dollar.

Int. 2. Has it not, for many years, been worth as high as $1.50 or $2.00 per acre?

Ans. Yes, sir; I mean for five years past.

O. G. WILDER.

ELAM C. SAWYER, being first duly sworn, was interrogated and deposed as follows:

Int. 1. State your name, age, occupation, and place of residence.

Ans. Elam C. Sawyer; age sixty-one years; farmer; residing in Saratoga, Grundy County; have lived there for the past six years on the section east of the one in dispute; prior to that I lived eight years on section 13 in Nettle Creek.

Int. 2. State for how many years you have been acquainted with the north half of the southeast quarter and the southwest quarter of the southeast quarter of section 12 in Nettle Creek.

Ans. I have known the land or seen it for the past 20 years, but have been more intimately acquainted with it for the last 14 years.

Int. 3. State what, in your opinion, is the annual rent and profit of said land during last 14 years, giving it by years or averaging it for
107 the whole time, per acre.

Ans. The 40 acres, $2.00 per acre, averaging for the whole time. There was but very little of the 80 acres broke six years ago. Since that it has been broken year by year till all of it that is dry enough to break has been broken, which is about 45 or 50 acres; and I shouldn't think it was over $1.50 per acre taking the whole 80 together, averaging for the whole time.

Cross-examination:

Int. 1. Could that 80 acres, with ten acres of it broke, been rented from 1855 to 1862 for $120 annual rent*ed* in cash o*r* an average?

Ans. I think it could. I don't think they received that amount for it from 1853 to 1862.

Int. 2. During those years, that is, from 1853 to 1862, if it had been offered for rental what amount of cash rent would it have brought considering the character of the land, the improvements, and amount broken?

Ans. I would not have been willing to have paid more than $100 p'r annum.

Int. 3. During those years was this land worth anything for pasturage?

Ans. I don't think it was, because there was plenty of pasture outside on the commons. There was 80 rods fence on the road which enclosed it in a field with other persons' land.

108 Int. 4. Was it then, with the ten acres of it broke, worth $100 per year; and, if so, for what purpose?

Ans. I hardly know how it could have been worth that amount unless it had been fenced in by itself. I can hardly tell what it was worth at that time. What was under the plough was worth from $2.00 to $2½ per acre.

Int. 5. What would it have rented for in market, per year, for the last six years, considering the character of the land, its condition as regards fences and extent of breaking, &c.?

I should not consider it worth over $2½ per acre, say $2.00 per acre for the whole time; but now it is worth more than that.

Int. 6. Supposing the land to have remained in the same condition in regard to fences, buildings, and amount of breaking that it was in the year 1853, what would it have been worth for the last 6 or 7 years?

(Objected to.)

Ans. I hardly know, but it would have been worth more than it had been before; probably it might have been rented for $1.25 per acre.

Int. 7. Has it not been possible and common to hire land in that county, with comfortable houses, fenced and under plow, for the prices you have named?

Ans. No, I should think not.

109 Int. 8. For the last six years, what have places of that character rented for in cash?

Ans. I have not known of any being rented, and could not tell.

Int. 9. What has plow-land rented for the past six years?

Ans. From $2.00 to $4.00 per acre.

Direct resumed:

Int. 1. In your cross-examination you state that you consider the pasture, prior to 1862, of little value. State whether, in your opinion, said 80 acres of grass-land and corn-land, being inclosed with other corn-land, has not been of value since 1856, both for cutting hay and pasture, during the fall and winter?

(Objected to.)

Ans. It would be worth something for the corn-stalks after the corn was gathered. The fall and winter pasture of prairie-grass is worthless; for hay-cutting it has been growing worth more and more yearly since 1856.

E. C. SAWYER.

JOHN CODY, being first duly sworn, was interrogated, and deposed as follows:

Int. 1. State your name, age, occupation, place of residence.

Ans. John Cody; age, 45 years; farmer; 'siding in Nettle

110 Creek. My land corners on the 40-acre lot in dispute. I have lived there about 18 years.

Int. 2. State whether you have been acquainted with the land in dispute for the last 18 years; have heard the testimony given in the case previously by O. C. Wilder and E. C. Sawyer, and whether the estimates given by them of the yearly value of the rent of said land is, in your opinion, correct.

Ans. In the main it is correct. I have been acquainted with the land, and have heard the previous testimony of these witnesses.

Cross-examination:

Int. 1. Did you hear the statements of the witness Sawyer upon cross-examination in regard to the character and condition of the land in question, and its rental value for the years indicated? and, if so, state whether the same is substantially correct.

Ans. I did hear that testimony, and think it substantially correct.

JOHN CODY.

STATE OF ILLINOIS,
Grundy County, ss:

I, Colquhorn Grant, master in chancery in and for said county and circuit court thereof, do hereby certify that the foregoing deposi-

111 tions were taken before me at the time and place mentioned in the caption hereto, by agreement of the parties, E. Sawyer, esq., appearing as solicitor for complainants, and C. Turner, esq., appearing for defendants. That the said several witnesses were first by me sworn according to law, and the several interrogations aforesaid propounded, and the several answers above written thereto given, and by me written, and said depositions carefully read over to the said witnesses, and by them subscribed and sworn to. Witness my hand this sixth day of April, A. D. 1869.

COLQ'N GRANT,
Master in Chancery.

And rested.

The defendants then offered to read the deposition of James M. Adsit, taken and on file in this cause, to which the complainant objected, on the ground that the same had no reference to the account of rents and profits, and so far as the same did not so refer; which objection the court overruled; the complainant excepted thereto then & there, and the deposition was read as follows:

The deposition of James M. Adsit, of Chicago, Cook County,
112 Illinois, a witness of lawful age, produced, sworn, and examined upon his corporal oath, on the thirteenth day of March, A. D. 1869, at my office in the city of Chicago, by me, Benjamin D. Magruder, one of the masters in chancery of the superior court of Chicago, pursuant to the stipulation hereto attached, said deposition being taken in a certain cause now pending and undetermined in the said superior court, wherein William Smith is complainant, and the said James M. Adsit, Suel Wright, and others, are defendants, Mr. Burgess appearing as solicitor for said complainant, and Mr. Payson, of King, Scott and Payson, appearing for the defendants.

The said JAMES M. ADSIT, one of the above-named defendants, being produced, sworn, and examined on the part of said defendants, deposes and says:

Direct examination by Mr. Payson:

Int. 1. What is your name, age, occupation, and place of residence, and what connection have you with this suit?

Ans. My name is James M. Adsit; I am 60 years old; I am a banker; I am a defendant in this suit—one of the defendants.

Int. 2. Did you ever have any dealings with Lewis P. Holmes? if so, state when and what occurred.

113 Ans. I bought a discharge of him once for a land-warrant. It was in 1848, in July or August. He came into my office to sell it. I declined at first to buy it; told him I did not care about buying it. He then left the office and again returned and pressed me to buy it, after which I offered him $40.00, and he accepted it. The usual papers were made out as in such cases, and executed. I paid him the money and he left.

Int. 3. What other proposition, if any, was made by Holmes to you at that time?

Ans. Not any other.

Int. 4. Holmes says, in his deposition, that he asked you to let him employ you to get his land-warrant for him. What do you say about that?

Ans. I say no. I never agreed to do anything of the kind.

Int. 5. What, if anything, was said by Holmes as to your doing that for him?

Ans. Nothing that I recollect of.

Int. 6. What was said by you?

Ans. I don't remember of anything.

Int. 7. Holmes says that he told you if you would let him have some money on it to get home with, he would repay you when he got his warrant. What do you say about that?

114 Ans. I don't know anything about it. I have no recollection of anything of the kind.

Int. 8. Holmes says that you finally consented to let him have some money on the certificate to get home with. How is that?

Ans. There is no truth in it.

Int. 9. When this certificate was given to you by Holmes, for what purpose did he give it to you?

Ans. He sold it to me.

Int. 10. What offer or agreement, if any, did you make at that time to said Holmes to act as his agent in procuring the warrant?

Ans. None whatever.

Int. 11. How positive is your recollection as to that?

Ans. Well, I know it.

Int. 12. Holmes says that he told you he would return you the money when he got the warrant. What is the fact as to that?

Ans. He told me nothing of the kind.

Int. 13. What, if anything, did he say to you as to his age?

Ans. Nothing, that I know of.

Int. 14. What knowledge had you at that time in regard thereto?

Ans. Well, I had no knowledge of it particularly. Nothing more than a general knowledge, from his appearance.

Int. 15. What was there, if anything, to lead you to think him a minor?

Ans. Nothing that I am aware of.

115 Int. 16. What was the value of such warrants or certificates at that time?

Ans. Well, I don't know that there was any market-value, or fixed value.

Int. 17. What was there, if anything, known to you to render this certificate in your opinion less valuable, or to cast suspicion upon it?

Ans. Well, I don't know that there was anything.

Int. 18. What reason, if any, had you to doubt whether he was entitled to a warrant?

Ans. Well, if there was anything about it, it was his discharge from Jefferson Barracks, at St. Louis, so far as he went, the short time that he had been in service, or had enlisted.

Int. 19. How common was it at that time to make such purchases?

Ans. It was a common practice, I believe.

Int. 20. Who was present at that interview, besides yourself and Holmes?

Ans. J. B. F. Russell; the business was done in his office. C. B. Farwell was present some of the time; perhaps Farwell was clerk at that time for Russell. The papers were executed in his office; he was notary public; C. B. Farwell witnessed it.

Int. 21. What was there, if anything, unusual in the way the papers were made out in this case?

Ans. Nothing.

Int. 22. What was the usual way of making them out?

Ans. The way these were made out.

116 Int. 23. What was there, if anything, unusual in other matter connected with the transaction?

Ans. Nothing, that I am aware of.

Int. 24. Did you ever see Mr. Holmes again?

Ans. Yes, once; Mr. Holmes came into my office, I don't know when it was, some time after; well, I can't tell when; it may have been a year, and it may not; he said he came after his land-warrant, or something of that kind; I told him that I hadn't his land-warrant, that I bought it of him, and paid him for it.

Int. 25. On what ground, if any, did Holmes, at that time, base his claim?

(Objected by complt.'s solr for form as leading.)

Ans. None, that I know of.

Int. 26. What did Holmes say about any such ground?

Ans. I don't recollect.

Int. 27. What, if anything, did you at any time say to said Holmes, from which he could infer that you were to get this warrant for him?

(Objected to by complt.'s solr.)

Ans. Nothing in the world about my getting a warrant for him. There is not a word of truth in it. I deny the whole thing. I bought Holmes' land-warrant and discharge, and paid him for it; and anything to the contrary from Holmes is false in every particular.

117 Int. 28. You have heard read certain portions of Holmes' testimony. State what is the truth in regard thereto.

(Objected to by complt.'s solr.)

Ans. Well, I don't. Anything in his testimony that states that I was to procure his land-warrant for him, or anything of the kind, is false in every particular. I don't remember anything else in his testimony, but so far as that is concerned, that is false, all of it.

Int. 29. The bill states that you represented to Holmes that said power of attorney was a paper necessary for him to execute to procure said land-warrant, &c.; state what was said in regard to that by either of you.

Ans. I don't recollect whether there was any conversation in reference to that, any further than this, that I never told him any such thing.

Int. 30. How much was the land worth, at the time you sold it?

Ans. Ten shillings an acre, a dollar and a quarter an acre; that was the Government price.

Int. 31. For what proportion of its real value did you sell it?

Ans. I sold the land on credit; the cash price for the land at the time I sold it would have been $1.25 an acre.

118 Int. 32. When was the consideration paid, or about when, as near as you can fix it?

Ans. Forty acres was paid for May 1st, 1849, the date of the deed; 80 acres paid for September 3rd, 1849.

Int. 33. What, if anything, did the purchasers know, at the time they paid the consideration, of the manner in which you obtained your title?

Ans. Nothing whatever; one of the parties to whom I deeded I don't think I ever saw; the deed was made by me and mailed to C. W. Gould, of Morris, Illinois.

Int. 34. What was said by you to either of the purchasers at the time they paid the consideration, or at any time prior thereto, about the manner in which you obtained the land?

Ans. Nothing; I couldn't have said anything to James Craig, for I

never saw him; it was James Craig that I didn't see; that was the man that the 80 acres were deeded to.

Int. 35. What was your business at that time?

Ans. Well, I was dealing in land, land-warrants, and money.

Int. 36. What is your present business, and how long have you been engaged in it?

Ans. I am a banker, now; I can't state precisely how long I have been engaged in it; it must be from fifteen to eighteen years, I should think.

119 Int. 37. What has been your place of business during that time?

Ans. Chicago, Clark street. I have been twelve years at 39 Clark street, and I think I was three years two doors north of where I am now.

Int. 38. How did the price you paid for this land-warrant compare with the prices at which such warrants were bought at that time?

Ans. Well, I don't know that I can make any comparison in reference to that matter. The price was determined by the agreement to purchase; there was no market-value that I know of.

Int. 39. When Holmes first offered you his discharge and land-warrant, what answer did you make?

Ans. I told him I didn't want to buy.

Int. 40. What did he do then?

Ans. He went off; a more proper answer would be, he left.

Int. 41. What happened after that; after he went off?

Ans. Well, he returned and insisted upon my buying it.

Int. 42. Did he tell you what he had been doing in his absence?

Ans. Not that I recollect of.

Int. 43. Do you recollect, or can you state any other matter or thing of importance to the defendants in this suit?

Ans. Not that I recollect of.

Cross-examination by Mr. Burgess:

C. I. 1. After you got these papers from Holmes, how much did you pay further to get the land-warrant?

Ans. Nothing.

120 C. I. 2. How much was it worth to send those papers and get the land-warrant?

A. Well, I don't know what it was worth; not a large sum, I think. Captain J. B. F. Russell used to charge about five dollars, sometimes ten; I don't remember particular.

C. I. 3. What amount did you, in fact, pay Holmes?

Ans. Forty dollars.

C. I. 4. Can you recollect the language that Holmes used to you in the course of the treaty about the land-warrant?

Ans. Nothing more than what I have stated in my previous answers.

C. I. 5. Can you state at this lapse of time that there was nothing occurred in the course of these negotiations, which resulted in making the papers by Holmes, from which Holmes might not infer that he would have the right to get the land-warrant on paying you back your money, and for your trouble?

Ans. Yes; I state distinctly there was nothing in the form of the papers that required Holmes to execute for the purpose of obtaining a land-warrant, except it might have been Holmes' affidavit of identity,

121 that he was the identical person to whom the discharge was issued. I think such an affidavit was required by the Department.

There was no sum agreed upon to be paid me by Holmes to procure his land-warrant for him, which there would have been had I agreed to obtain it for him.

C. I. 6. Did not the parties who bought this land from you know that you had entered it with this land-warrant?

Ans. Suel Wright knew. I never saw the others; I don't know anything about them.

C. I. 7. Did not you obtain from the Land-Office a certificate, stating that you had entered the land in controversy in this suit under said land-warrant?

Ans. I did.

C. I. 8. Had you any other title, or did you claim to have any other title than under said land-warrant to said land, at the time you sold it?

Ans. When I deeded the land to the parties named in the deeds, I had a patent from the Government, from the United States, to the land; that's my recollection now. I sold it when I deeded it.

C. I. 9. Was there no contract between you and these parties for the sale of this land before you actually conveyed it to them?

Ans. Yes.

C. I. 10. How soon after you got the land-warrant were these contracts made?

122 Ans. I don't remember how long after I got that land-warrant before I entered this land. I don't know how long after I got that land-warrant before I located it and sold the land.

C. I. 11. Suel Wright appears to have abandoned a pre-emption claim to this property; did you not, before locating the land-warrant, make some kind of an arrangement with him about the purchase of the property, or some part of it?

Ans. Very likely; it was a usual transaction at that time in locating land-warrants, &c.

J. M. ADSIT.

Subscribed and sworn to before me this 13th day of March, A. D. 1869.

BENJAMIN D. MAGRUDER,
Master in Chancery of the Superior Court of Chicago.

Superior court of Chicago.

WILLIAM SMITH
vs.
JAMES M. ADSIT, SUEL WRIGHT, ET AL. } In chancery.

STATE OF ILLINOIS,
County of Cook, ss.:

I, Benjamin D. Magruder, master in chancery of the superior court of Chicago, do hereby certify that before the commencement of the examination of the witness, whose name is subscribed to the foregoing deposition, he was by me duly sworn according to law, and that
123 the same was subscribed and sworn to by said witness at the time therein mentioned in the jurat thereto.

Chicago, Ills., March 13th, 1869.

BENJAMIN D. MAGRUDER,
Master in Chancery of the Superior Court of Chicago.

[5 cent revenue-stamp, cancelled.]

The defendants also put in evidence and read the deed from James M. Adsit & wife to Suel Wright, dated the day of , and recorded in the recorder's office of said Grundy County, as follows:

This indenture, made this sixth day of September, in the year one thousand eight hundred and forty-eight, between James M. Adsit and Arville S., his wife, of the city of Chicago, county of Cook and State of Illinois, of the first part, and Suel Wright, of Grundy County and State aforesaid, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of fifty (50) dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath aliened, remised, released, conveyed, and confirmed, and by these presents do alien, remise, release, convey, and confirm unto the
124 said party of the second part, and to his heirs and assigns forever, all the southwest quarter of the southeast quarter of section twelve, (12,) in township thirty-four (34) north, range six (6) east of the third principal meridian, containing forty acres, be the same more or less; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the above-described premises, and every part and parcel thereof with the appurtenances: To have and to hold all and singular the above-mentioned premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever; and the said James M. Adsit, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that he has not made, done, committed, executed, or suffered any act or acts, thing or things, whatsoever, whereby or by means whereof the above mentioned and described premises or any part
125 or parts thereof, now are or at any time hereafter shall or may be impeached, charged or *cu*cumbered in any manner or way whatsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JAMES M. ADSIT. [SEAL.]
ARVILLE S. ADSIT. [SEAL.]

Sealed and delivered in presence of—

STATE OF ILLINOIS,
County of Cook, ss:

I, Geo. Davis, cl'rk co. com. c't, in and for the said county, in the State aforesaid, do hereby certify that James M. Adsit and Arville, his wife, who personally known to me as the real persons whose names are subscribed to the annexed deed, appeared before me this day in person, and acknowledged that they executed and delivered the said deed as their free and voluntary act for the uses and purposes therein set forth; and the said Arville S. Adsit, wife of James M. Adsit, having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said deed having been by me made known and fully explained to her, she acknowedged that she had freely and voluntarily executed the same, and relinquished her dower to the

126 lands and tenements therein mentioned without compulsion of her said husband; and that she did not wish to retract the same.

Given under my hand and official seal this 5 day of Sept., in the year of our Lord one thousand eight hundred and forty-eight.

[L. S.] GEO. DAVIS, *Clk.*

STATE OF ILLINOIS,
Grundy County, ss:

I, P. Kelly, recorder in and for said county, do hereby certify that the within deed was filed for record on the 15th day of Sept., A. D. 1848, at 8 o'clock a. m., and duly recorded in book C, page 374.

P. KELLY,
Recorder.

James M. Adsit and wife to James Craig. Deed. N. ½ of S. E. ¼ of sec. 12, town. 34, R. 6.

This indenture, made the first day of May, in the year one thousand eight hundred and forty-nine, between James M. Adsit and Arville S., his wife, of the city of Chicago, county of Cook and State of Illinois, of the first part, and James Craig, of Grundy County and State aforesaid, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one hundred and twenty (120) dollars, lawful money of the United States of America, to
127 him in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath aliened, remised, released, conveyed, and confirmed, and by these presents do alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all the north half of the southeast quarter of section twelve, (12,) in township thirty-four (34) north, range six (6) east, in the district of lands subject to sale at Chicago, Illinois, containing eighty (80) acres, be the same more or less, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, claim, and demand whatsoever, as well in law as in equity of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the above-mentioned premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said party of the first part, his heirs, executors, and administrators, doth
128 hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that he has not made, done, committed, executed, and suffered any act or acts, thing or things, whatsoever whereby or by means thereof the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be, impeached, charged, or encumbered in any manner or way whatsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JAMES M. ADSIT. [SEAL.]
ARVILLE S. ADSIT. [SEAL.]

Signed, sealed, and delivered in presence of
WM. H. BUSHNELL.

STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

I, Wm. H. Bushnell, a notary public in and for the said city, in the State aforesaid, do hereby certify that James M. Adsit and Arville S., his wife, who are personally known to me as the real persons whose names are subscribed to the annexed deed, appeared before me this day in person, and acknowledged that they executed and delivered the said deed as their free and voluntary act, for the uses and purposes
129 therein set forth. And the said Arville S. Adsit, wife of James M. Adsit, having been by me examined separate and apart, and out of the hearing of her said husband, and the contents and meaning of the said deed having been by me fully made known and explained to her, she acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and official seal this first day of May, in the year of our Lord one thousand eight hundred and forty-nine.

[SEAL.] WM. H. BUSHNELL,
Notary Public.

A true copy of the original, as filed for record on the 12th day of March, A. D. 1850, at 1½ o'clock p. m.

GEO. H. KIERSTED,
Recorder.

STATE OF ILLINOIS,
Grundy County, ss:

I, James R. Combs, clerk of the circuit court, and ex-officio recorder in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a true and correct copy of the record of a certain instrument filed in my office on the 12th day of March, A. D. 1850, in Book D, on pages 196 and 197, the parties to the same being
130 James M. Adsit and Arville S. Adsit, his wife, of the first part, grantors, and James Craig, of the second part, grantee.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at Morris, this 18th day of February, A. D. 1869.

[SEAL.] JAMES R. COMBS,
Clerk of the Circuit Court and Ex-officio Recorder.

And also read the deed from James Craig to William Craig, and from William Craig to Patrick Rourk, as follows:

James Craig and wife to William Craig. Deed. N. ½ S. E. ¼ sec. 12, town. 34, range 6.

This indenture, made this fourteenth day of March, in the year of our Lord one thousand eight hundred and fifty, between James Craig and Elizabeth, his wife, of the county of Grundy and State of Illinois, party of the first part, and William Craig, also of the said county and State, party of the second part, witnesseth: That the said party of the first part, for and in consideration of three hundred dollars, to them in hand paid by the said party of the second part, (the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom.) have granted, bargained, sold, remised,
131 released, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, alien, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all the following-described lot, piece, or parcel of land, to wit: the north half of the southeast quarter of section No. twelve, (12,) in township thirty-

four (34) north, range No. six (6) east of the third (3d) principal meridian, containing eighty acres, be the same more or less; together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever, of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances: To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever; and the said party of the first part, for themselves, their heirs, executors, and administrators, do covenant, grant,
132 bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents they *was* well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law in fee-simple, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid; and that the same are free and clear of all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind or nature soever; and the above-bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In witness whereof the said party of the first part hereunto set their hands and seals the day and year first above written.

JAMES CRAIG, [SEAL.]
ELIZABETH CRAIG. [SEAL.]

Signed, sealed, and delivered in the presence of—
GEO. H. KIERSTED.

STATE OF ILLINOIS,
Grundy County, ss:

133 George H. Kiersted, clerk of the circuit court in and for the said county, in the State aforesaid, do hereby certify that James Craig and Elizabeth, his wife, personally known to me as the same persons whose names are subscribed to the foregoing instrument of writing, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth. And the said Elizabeth Craig, wife of the said James Craig, having been by me examined separate and apart and out of the hearing of her said husband, and the contents and meaning of the said instrument of writing having been by me made known to her, she acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and private seal this 16th day of March, A. D. 1850, (no official seal having been provided.)

GEO. H. KIERSTED, *Clerk.* [SEAL.]

134 A true copy of the original filed in this office for record on the 16th day of March, A. D. 1850, at 2 o'clock p. m.

GEO. H. KIERSTED,
Recorder.

STATE OF ILLINOIS,
Grundy County, ss:

I, James R. Combs, clerk of the circuit court, and ex-officio recorder in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a true and correct copy of a certain instrument of writing, or warranty-deed filed for record in my said office on the 16th day of March, A. D. 1850, and recorded in book D, on pages 223 & 224.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Morris, in said county, this 4th day of September, A. D. 1869.

[SEAL.] JAMES R. COMBS, *Clerk.*

William Craig and wife to Patrick Rourk. Deed. N. ½, S.E. ¼, sec. 12, 34, 6.

This indenture, made this twenty-first day of December, in the year of our Lord one thousand eight hundred and fifty, between William Craig and Mary, his wife, of the county of Grundy and State of Illinois, of the first part, and Patrick Rourk, of the city of New York, in the State of New York, of the second part,
135 witnesseth that the said parties of the first part, for and in consideration of three hundred dollars to them in hand paid by the said party of the second part, (the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom,) have granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, alien, and confirm unto the said party of the second part, and to his heirs and assigns forever, all the following-described lot, piece, or parcel of land, to wit: The north half of the southeast quarter of section twelve, (12,) in township thirty-four (34) north, of range six (6) east, of the third principal meridian, in the county of Grundy, and State of Illinois, containing eighty acres, be the same more or less, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever, of the said parties of the first part, either in law or equity, of, in,
136 and to the above-bargained premises, with the appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever. And the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, they were well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law, in fee-simple, and have good right, full power, and lawful authority to grant, bargain, and sell the same, in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, and assessments, and incumbrances, of what kind soever. And the above-bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming, or to the whole or any part thereof, the said parties of the first part shall and will warrant and forever defend.

137 In testimony whereof, the said parties of the first part hereunto set their hands and seals, the day and year first above written.

WILLIAM CRAIG. [SEAL.]
MARY CRAIG. [SEAL.]

Signed, sealed, and delivered in presence of—
CHARLES CRAIG.

STATE OF ILLINOIS,
Grundy County, ss:

I, Charles Crain, justice of the peace in and for the said county, in the State aforesaid, do hereby certify that William Craig, and Mary, his wife, who are personally known to me *are* the real persons whose names are subscribed to the above deed, appeared before me this day in person and acknowledged that they executed and delivered the said deed as their free and voluntary act, for the uses and purposes therein set forth; and the said *William* Craig having been by me examined, separate and apart and out of the hearing of her husband, and the contents and meaning of the said deed having been by me made known and fully explained to her, acknowledged that she freely and voluntarily executed the same, and relinquished her dower to the land and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

138 Given under my hand and seal this fifteenth day of February, in the year of our Lord one thousand eight hundred and fifty-one.

CHARLES CRAIN, *J. P.* [SEAL.]

A true copy of the original as filed for record May 12, 1852.

STATE OF ILLINOIS,
Grundy County, ss:

I, James R. Combs, clerk of the circuit court and ex-officio recorder in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a true and correct copy of a certain instrument of writing or deed filed for record in my said office on the 12th day of May, A. D. 1852, and recorded in book F on pages 496 and 497.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Morris, in said county, this 4th day of Sept., A. D. 1869.

[SEAL.] JAMES R. COMBS, *Clerk.*

And called as witness' Da*vid* David, and Suel Wright, Patrick Rourk, who were duly sworn in open court, and testified as follows:

DANIEL DAVID, a witness called on behalf of the defendant', being duly sworn, was examined in chief by Mr. Thoig and testified as follows:

139 Q. Where do you reside?
A. In Grundy County.
Q. What is your age?
A. I am 63 years old now.
Q. Do you reside on any of the land in controversy in this suit, or occupy any of it?
A. I occupy it—I occupy the W. ½ of S. E. ¼ of section 12—the S. W. ¼.
Q. Of the S. E. ¼?
A. Of the S. E. ¼.

Q. You occupy the S. W. ¼ of the S. E. ¼, section 12, township 34 north, range 6 east, in Grundy County?

A. Yes, sir.

Q. Do you own it?

A. I bought it and paid for it.

Q. Of whom did you buy it?

A. Of Mr. Sewell Wright.

Q. When?

A. I think my deed was dated in 1848 or 1858. Let's see—1858.

Q. Have you occupied it since then?

A. I have occupied it since then.

Q. What is your business?

A. Farming.

Q. Is that a portion of the farm upon which you reside?

A. Yes, sir.

Q. What was that land worth an acre, together with the N. ½ of the S. E. ¼ of the said section 12, in, say, December, 1853?

(Objected to.)

Q. What was the S. W. ¼ of the S. E. ¼ and the N. ½ of the S. E. ¼, section twelve, town. 34 north, range 6 east, in Grundy County, in December, 1853, the day the bill was filed? What was the value of that land at that time?

(Objected to. Admitted, subject to objection.)

140 A. The 80 acres of the N. ½ of the ¼, I think, had but a very little improvement. I should think it worth but a very little more at that time than the entry-price.

Q. What was that?

A. $1.25. A very little more, if any.

Q. Well, the balance?

A. The balance had some little improvement on it. It might have been worth, in 1853, perhaps, $2.50 an acre. There was plenty of land to enter around there, or considerable, at least, at that time at $1.25.

Q. What are the improvements worth on the 40 acres, being the S. W. ¼ of the S. E. ¼ of said section 12?

(Objected to. Admitted, subject to objection.)

A. At this time?

Q. Yes, sir.

A. I should think between $300 and $400, at least.

Q. What would that 40 acres, the S. W. ¼ of the S. E. ¼ of said section 12 be worth a year, the rental value of it, the use of it for a year?

A. Under the present circumstances?

Q. Yes, sir.

A. The one which is now under cultivation?

Q. Yes; what is the value of it?

A. For how long?

Q. Well, take it back any time; if it is worth more one year than another, state it.

141 A. It was for a very considerable number of years there that that land was worth but a very little. A few years past land has been worth more, but at first, along for a number of years, until about the time, I guess, since I bought it, or about that time, land was worth—well, I don't know as I could state any particular money *I* value, for I don't know as there was. Corn sometimes, which was the staple then, was worth 15 to 20 cents, and sometimes a little higher, but you could not rent land for money at that time, that I know of, but then since then it has been higher, and it has been worth—just

where land has been rented without any improvements on it, any buildings—I should think that it would be worth—well, take it on an average from that time up, from the first commencement, say 6 years, 6 or 8 years back—I should think it was worth, perhaps, $1.50 an acre; but before that I don't know as I could place any value on it. I don't suppose it would be worth 50 cents to rent it for money; I don't think it would, not over a $1.00, any way; I don't think it would be worth over $1.00 an acre from the time up.

Q. How would the value of the land compare with the improvements on the land?

A. At the present?

Q. Now.

142 A. Well, I should think the land would be worth $35.00.

Q. A what?

A. An acre.

Q. I am not asking you that; the rental value of the land; the value of the land from the time it was located up to the present time on the one side, and the improvements on the other.

A. What would be the difference?

Q. Yes, if any, in your opinion.

(Objected to. Admitted, subject to objection.)

A. I should think the improvements would be worth, that is, the land would be worth, rather more than the improvements.

Q. You think that the land would be worth more than the improvements?

A. I should think so.

Q. How much more, in your opinion?

A. Well, we have taken land there from 3 to 4 years, 4 years, and broke it up, and had four years' crops on it for the breaking; that has been the usual thing.

Q. Have four years' crops for the breaking?

A. Of late years. Formerly, I don't know as you could hardly let a man have it to fence it.

Q. What improvements are there on that 40 acres?

A. It is fenced on two sides with an orchard, and about all broke, only 8 or 10 acres.

143 Q. All except 8 or 10 acres broken?

A. Yes, sir.

Q. Under cultivation?

A. Yes, sir.

Q. What was the value of those improvements?

A. I should think between $300 and $400.

Q. How is it with the taxes; who has paid the taxes on it?

A. Since it came into my possession, I have paid them.

Q. That is since 1858?

A. Since 1858.

Q. Who paid them prior to that time, do you know?

A. I think I have some of them among my tax-receipts, but I don't know that I have them all; Mr. Wright paid them before that, as far as my knowledge is concerned.

Q. Your grantor?

A. Yes, sir.

Q. How much a year were the taxes on that 40 acres?

By Mr. BURGESS. I suppose the tax-receipts will show that.

By the COURT. I think, if he knows, he can answer.

A. I can't tell exactly.

Q. As near as you can tell.

A. As near as I can tell, they were very light at first, but of late I have paid something like $20 to $25 taxes on it.

Q. On the 40 acres?

A. Yes, sir.

Q. A year?

A. Yes, sir; on that 80 I have paid $50.00.

Q. I didn't include only this.

A. Probably it would not average over $10.00 or $12.00 a year taxes.

144 Q. Since you have had it?

A. Since I have had it.

Q. Do you think it would average that?

A. I think it would. I have the receipts, which I can get you and ascertain.

Q. Where are the receipts?

A. They are at home.

Q. You did not bring them with you?

A. I did not.

Q. The 80 acres the N. ½ of the S.E. ¼, section 12, town. 34, north, range 6 east, in Grundy County, what would be the rental value of that 80 acres a year; how would it compare with the 40 that you have just spoken of?

A. About the same, I should think; very little difference.

Q. The value of the land about the same?

A. About the same; there is not so much of it broken.

Q. How much of that is broken?

A. I should think rather over one-half.

By the COURT. Do you mean the same per acre?

A. Yes; per acre; there is over one-half of that broken, perhaps 50 acres of it.

Q. And the land worth about the same?

A. About the same.

Q. And was it worth about the same in 1853?

No, sir; there was not a very great deal of that broken at that time.

Q. What was it worth in 1853—that 80 acres?

A. In 1853, I don't know. In 1853 it would not be worth but very little more than open prairie; well, it was open prairie; there was

145 none of it broken at that time.

Q. Was it worth any more than the Government price?

A. I don't think it was in 1853. That was before there were any improvements on it, I think. If there were any improvements, it was a very little broken.

Q. You know that 80 acres—the N. ½ of the SE. ¼ section 12—34?

A. Yes, sir.

Q. What are the improvements now on that?

A. I should think nearly 50 acres broken.

By the COURT. I don't think that is a proper question. I think if that was the question to which the objection was made, I should be inclined to restrain it now, because the improvements were put on since this suit was commenced.

By Mr. THERIG. I was going to see how that is.

By the COURT. I think the question should be limited.

By Mr. THERIG. I was asking him what improvements were now on it, and when they were put on. That will cover the ground, if he knows.

By the COURT. Well, he can answer that.

A. I was trying to call to mind when Mr. Craig first moved on to that. There was but a very small (I think some 5 or 10 acres) broken
146 before Mr. Samuel came, the one that now occupies it, came on to it; but I am not positive. But I think it must have been in somewhere like 1858, or somewhere along there; may be in 1860. No, about 1858, probably, or 1859.

Q. Prior to that time, what were the improvements, if any, on it, and when were they put on?

A. There was nothing worth speaking of before that. I don't think any value could be placed on any improvements before that. There was some little broken, and perhaps had been let alone, and had grown up a good deal again.

Q. Where is James Craig, the grantee to whom Mr. Adsit conveyed?

A. I understand he is dead.

Q. Do you know when he died?

A. It must have been some time near 1850.

Q. Some time about that?

A. About that time, I should suppose.

By Mr. CLOURY. Samuel Craig, that is the man you mean, that is dead?

A. No.

Q. Samuel Craig occupies the premises, does he?

A. He occupies it at present.

Cross-examination by Mr. BURGESS:

Q. In December, 1853, did you know this land?

A. Yes, sir.

Q. How near did you live to it then?

147 A. I lived on one part of the ¼.

Q. In 1853?

A. Yes, sir.

Q. Not on that land itself, but on part of the ¼?

A. On that 40 on the south.

Q. I understand it is the remaining 40 not covered by the land that is in controversy.

A. Yes, sir.

Q. What improvements were on the 40 acres at that time?

A. The 40?

Q. On the 40 that you claim now.

A. When?

Q. In December, 1853.

A. There might have been 15 acres broken on it, and a small house.

Q. What has become of the house since?

A. It has been moved off.

Q. Was there any fencing on it at that time?

A. Yes, sir.

Q. What were the improvements worth that were there at that time?

A. Well, it was fenced in on two sides, about the same as now.

Q. Those fences standing there yet?

A. Yes, sir.

Q. Good?

A. Well, not very good.

Q. Pretty much worn out, ain't they?

A. Not as good as when they were built.

Q. What were they worth at that time? You say the improvements now are worth $400. What were they worth at that time?

A. Well, it would cost—well—I don't know what it would cost
148 at that time; but it would cost $1.00 a rod to put it up—more too; it is worth $1.25. I don't know what it would cost then. It was fenced with rails and posts.

SEWELL WRIGHT, a witness called on behalf of the defendants, being duly sworn, was examined in chief by Mr. Thorigand, testified as follows:

Q. What is your age?
A. 71 next August, if I live.
Q. Are you the grantee in the deed from Adsit to you?
A. Yes, sir.
Q. You purchased the land of Adsit?
A. Yes, sir.
Q. Where do you live?
A. Kendall County I live in.
Q. What did you pay Mr. Adsit for that land?
A. I gave him $50.00 for the 40 acres.
Q. In what year; do you remember?
A. Well, I don't remember, I declare; 1848, I think, or 1849.
Q. Was that the value of the land then?
A. Yes; that was called its price.
Q. When you bought and paid for this land did you know, or had you heard, of any transactions between Adsit & Holmes—Lewis P. Holmes?
A. I did not. I did not know that there was such a man in the world that I know of.

Q. Had you then heard of any of the allegations alleged in the
149 bill of complaint in this case in regard to the transactions between Adsit & Holmes?
A. No, sir.
Q. Who paid the taxes on this S. W. ¼ of the S. E. ¼ of section 12, in town. 34 north, range 6 east, in Grundy County?
A. I paid it.
Q. Up from the time you purchased?
A. From the time I purchased until I sold to Mr. David.
Q. How much were those taxes?
A. I can't tell you now; I have not any receipts with me. It is so long ago; but I should think likely something like $5.00 a year; about that.
Q. Do you think they would average that?
A. I think they would. I wouldn't be positive about it.
Q. What were the improvements on that property worth in December, 1853, upon that 40 acres that you sold to David?
A. At the time that I sold to David?
Q. No; in December, 1853?
A. Well, I declare I don't know as I could tell exactly about that; they were not worth a great deal. I built a small house on it, and I fenced it in on one side, on the road; the rest was all in together with a number of neighbors of us together. Well, I should suppose, maybe it might be worth a couple of hundred dollars; something like that.

150 Q. The improvements then on it?
A. Not over that, I should think.
Q. The improvements then on it?
A. Then on it.

Q. Was this land at that time worth any more than the Government price, $1.25 an acre; if so, how much more?

A. Well, I should think it worth enough more to pay the improvements that were put on it.

Q. That is, in December, 1853, you mean?

A. In 1853; that was before I sold it to David.

By Mr. BURGESS. Five years before you sold it to David?

Yes, sir. How much do I think it was worth an acre?

Q. Yes; I ask you if it was worth any more than the Government price, $1.25 an acre; and if worth any more, how much more?

A. Oh, well, it was worth some more; land began to raise a little then.

Q. What was the value of that land an acre up to that time; what could it have been rented for an acre?

A. What, previous to that—up to that time?

Q. Yes; from the time you got it up to December, 1853?

A. Well, I don't suppose I could have rented it for any money-price—money-rent; I perhaps could have rented it out for a third that
151 was raised on the place; perhaps the money-rent; I don't know as there could be any estimate put on it in those days, there was so much vacant land.

Q. In 1858, when you sold, was there much vacant land about there then?

A. I think not.

Q. Unoccupied, then?

A. There was much unoccupied land there, but speculators and such men had it; I guess there was none there at Congress price; I think not.

Q. Was there land unoccupied, open, about them?

A. Yes, sir.

Q. How much?

A. I don't know; I can't recollect; our cattle ran out, I know, and got their living pretty much, when we wanted them to.

Q. What, in your opinion, would be the value of that land an acre; the rental value? What was it worth an acre to rent from the time you commenced on it?

By Mr. BURGESS. That is objected to, because we only claim in the bill from the time the bill was filed.

Q. From December, then, 1853, up to the present time.

A. To the present time?

Q. Yes; how much an acre; and if one was more than another, what would be a fair average from 1853 to the present time; what could it have been rented for?

152 A. Well, until our produce came up for a few years back, it would not be worth much; now, for a few years back, land began to be worth something.

Q. How many years back?

A. About 5 or 6 years back; along there; 7 years; maybe six years.

Q. Would it have been worth anything—could it have been rented prior to that time—and if so, how much?

A. Well, it could have been rented for something prior to that, a piece back; but not a great ways back; I don't know as I could tell how much.

Q. How much an acre for the last 5 or 6 or 7 years?

A. I should not suppose it could have been rented for over about

$1.50 an acre; if there had been buildings on it it would have been a little different.

Q. How prior to that; how much an acre?

A. Perhaps you could have rented it out and got a third of the crop.

Q. How much money could you have got for it?

A. That is another thing.

By Mr. BURGESS. How much would the third of the crop be worth?

A. I don't recollect what produce was; but if a man had got to hire his corn shelled and hauled and the malt hauled away, there would not be very much left of the third.

153 Q. Would the same apply in regard to the 40 acres and the 80 acres?

A. I don't know as I understand you exactly—the difference in the price of the land?

Q. Yes, sir?

A. Well, this 40 that I sold to Mr. David was broken before that 80, or improved—better improved—under cultivation, I mean; and I don't think there was so much wet land on it as there is on that other 80. The land is worth more, and that was not worth to rent but little, because it was all in a grove, and a good deal of it was wet and not good for anything else, and we could mow our grass where we were a mind to on those days, at home or abroad.

Q. Plenty of grass?

A. Yes, sir; but now it is worth something.

Q. What did David pay you for it?

A. I think, if I ain't mistaken, he paid about $9.00 for the 40 acres, as near as I can recollect; it would not vary much from it.

Q. Did you inform Mr. David of any of the charges alleged in the bill of complaint, in regard to the manner in which—of the dealing between Adsit and Holmes—did he know anything about it?

(Objected to.)

Cross examination by Mr. Burgess:

154 Q. You say the improvements were worth about $200?

A. On that 40?

Q. On that 40 in 1853, when this bill was filed?

A. I should think about that.

Q. That included this house, did it not?

A. Yes; the house, I think, was on it then; if the house had not been on it, it would not have been worth that.

Q. How much were they worth, aside from the house; the house has since been taken away?

A. I don't know; I believe it cost us about $3.00 an acre to get that prairie broke.

Q. This was not all broken, you know?

A. No; this was not all broken.

Q. Now, just figure up in your head; you know how much the improvements were worth?

A. I can't tell exactly.

Q. How much was the house worth; we can come at it that way?

A. The house probably was worth—probably it cost me pretty near $100; no; it didn't cost $100 quite; lumber was cheap; I drawed the lumber myself.

Q. Not what it cost you; what was it worth to anybody to put the house on there, if he had to hire it done?

A. Probably $60 to $70.

Q. You say you paid taxes upon this property?
A. Yes, sir.
Q. Where are your tax receipts?
155 A. They are at home, if there any of them that are not lost.
Q. Did you look for them before you came here?
A. No; I didn't look for them.
Q. How do you recollect the amount of taxes paid upon this land?
A. I couldn't testify exactly, but, as near as I can recollect, it was something like $4 or $5.00 a year.
Q. Is that mere guess-work, or have you anything to recollect from?
A. It is partly guess-work. I wouldn't say it was positively.
Q. This land, you say, was not worth but the Government price, $1.25, and you say the taxes a year was $4.00?
A. It was not worth more than Government price when we began to break it.
Q. How much was it worth, then?
A. It kept crawling up a little by degrees. As I testified just now, I sold it for $900.
Q. How much were the taxes upon it when you commenced?
A. I think I didn't pay any tax when I commenced. I think it hadn't commenced to be taxed.
Q. When did it first begin to be taxed?
A. I guess it must have been a couple of years or more.
Q. Wasn't this land exempt from taxation five years?
156 A. I don't know but it was. I guess it was five years.
Q. Five years before it was liable to be taxed at all?
A. Yes, sir; I think you are right, sir.
Q. Now, after it began to be taxed, you paid $5.00 a year?
A. I guess it was not $5.00.
Q. How much was it?
A. Well, may be, $4.00.
Q. Are you sure it was $4.00?
A. I won't be sure.
Q. Are you sure it was more than $1.50?
A. Yes; I think so. I think I can be sure of that.
Q. Then you did not pay taxes only for about five years. You sold it in 1858?
A. Something like five or six years. I had no idea this was going to come up, or I would have fetched them along.
Q. Didn't you claim a pre-emption right on this land before it was purchased?
A. Yes, sir.
Q. Didn't you abandon that pre-emption at the time this land was entered under this land-warrant? Didn't you relinquish your pre-emption at the time the land was located under the land-warrant?
A. I entered it of Mr. Adsit. I bought it, I would say, of Mr. Adsit. He entered the land. I couldn't tell for the life of me how he entered it, with money or a soldier's warrant. Never asked him the question.
Q. But you gave up the pre-emption right at the time he bought it for you?
157 A. Yes, sir; my pre-emption ran out. It ran out before I came up here, I guess, to see anything about it.

PATRICK O. ROURK, one of the defendants, being duly sworn, was examined in chief by Mr. Therig, and testifies as follows:
Q. Where do you reside?

A. New York.
Q. How long have you resided in New York?
A. Since 1836.
Q. What is your business?
A. Engineer.
Q. What engineer?
A. Civil—running a steam-engine.
Q. Where?
A. Tribune office.
Q. How long have you been engaged in it?
A. 28 years.
Q. Are you one of the defendants in this case?
A. Well, I don't know how I could style that. I didn't know anything of this matter until about a month ago.
By the COURT. Well, you suppose you are one of the defendants now, do you?
A. I suppose so now.
Q. Do you own any of this property described in the bill of complaint in this case, the N. ½ of the S.E. ¼ section 12, town. 34 north, range six east, in Grundy County?
A. Well, there is the deed, sir.
Q. Is that the deed to you?
A. Yes, sir.
158 (Counsel for the defendant offered the deed in evidence.)
Q. Of whom did you purchase?
A. Wm. Craig.
Q. Was he a brother of James Craig?
A. Yes, sir.
Q. Are the Craigs related to you?
A. Yes, sir; they are my brothers-in-law.
Q. They married your sisters?
A. I married their sister.
Q. Of whom did you purchase?
A. Of Wm. Craig.
Q. When? Oh, the deed here will tell.
A. That tells, sir.
Q. The 21st day of December, 1850. Did William purchase of James Craig?
A. That is as I understand it, sir.
Q. At the time you purchased had you ever heard anything of the allegations at the time in the bill of complaint as to the transactions between Adsit & Holmes?
A. No, sir.
Q. When did you ever hear of Holmes, if at all?
A. I never heard of Holmes until to-day, to my knowledge. Yes, I heard of it the day I came on here, the day the case was adjourned. I think it was on the 16th of May.
Q. This year?
A. This year.
Q. Had you ever heard of it prior to that time?
A. No, sir.
Q. What did you pay for that land?
A. I paid $300.
Q. Was that its value?
159 A. I didn't really know what the value was, sir. I loaned the money to James Craig to buy this farm, and he went to California

and turned over the land to his brother, and he died there, and the deed was made over to me for the $300.

Q. Is James Craig dead?

A. Yes, sir.

Q. When did he die?

A. I really don't recollect the date when he died.

Q. About how many years ago?

A. Well, probably about—it may be about 17 years ago, to the best of my knowledge; it is about that time.

Q. This land was conveyed to you to pay you for the money you had loaned James Craig?

A. Yes, sir.

Q. Have you paid the taxes on this 80 acres?

A. Those are the receipts.

Q. Well, have you paid them?

A. I have paid them up to the time that Samuel took hold of it, and Samuel paid them, I presume, since, from what I can learn. Samuel went to live on it; he paid the taxes.

Q. When did he go to live on it?

A. I think it was in 1862. I think, to the best of my knowledge, it was 1862.

Q. He is on this 80 acres now?

A. He is on the 80 acres now.

Q. And these are the tax-receipts for the amount you paid prior to that time.

A. Yes, sir.

160 Q. Do you know anything else pertinent to the case? If so, state it.

A. I don't know anything of the case any further than what I brought the documents there, and how I came to get it; don't know anything about the value of the land, nor what it was, nor anything else. I did not know it was worth $100 when I took it.

Q. But you took it in payment of this debt?

A. I took it in payment of that debt.

Cross-examination by Mr. Burgess:

Q. You say that Samuel lives on these premises. He lives on the adjoining land; he don't live on the 80 acres, does he?

A. Isn't the 80 acres together? The gentleman can state that better than I can.

Q. The other witnesses say the land was vacant or unoccupied, without a house?

A. I have not been there, and I cannot really tell you or answer any question about it who is living on it.

(Counsel for defendant offered in evidence tax-receipts that the witness says he has paid from 1850 to 1859.)

DANIEL DAVID, being recalled, was examined by Mr. Therig, and testified as follows:

161 Q. When you purchased this land of Mr. Wright did you make or cause to made any search of the records as to any liens or incumbrances upon the land? If so, state what was done in Grundy County.

(To this question counsel for the plaintiffs objected; which objection was overruled by the court; to which ruling of the court counsel for the plaintiffs then and there excepted.)

A. I did.

Q. What did you do?

A. I got an attorney in Morris to examine the records. He found a deed, I think, recorded to one——(witness thinking.)

Q. Smith?

A. Smith. We searched the records back. We could find nothing more in regard to Smith or the grantor.

Q. Holmes?

A. Holmes—at all. We found the deed of Mr. Adsit, from him to Wright, and I being acquainted with Mr. Wright and having some knowledge of his transactions—of his business in getting the land &c.—I took it for granted that Mr. Adsit was the original owner; in fact, he told me that he had seen——.

Q. Who told you?

A. Mr. Wright told me he had seen the patent; I think, that Adsit had agreed to send it to him. I don't know but what he did send it.

162 I am not positive, but he agreed to, I know. I called for it once, but he hadn't it. The attorney satisfied me that the deed was on record there.

Q. That is, the deed from Holmes to Smith?

A. From Holmes to Smith; consequently I passed it over and bought the land.

Q. The attorney whom you employed advised you that there was no obstacle to your purchasing it?

A. That is the way he stated it to me, and I never heard anything in regard to any difficulty in regard to the land during that time, until this spring; never knew anything of any litigation in regard to it or any difficulty in the title.

Q. Up until this last spring?

A. Up until this last spring. I have had one or two abstracts of title since that.

Q. Any of them show the pendency of this suit?

A. Nothing at all, sir.

By the COURT. You bought it before 1853?

A. 1858.

By the COURT. You were in possession, then, for a long time before you bought?

A. No, sir; Mr. Wright lived right on the same, south.

Q. You said that you knew the land?

A. I knew the land. I was the first settler on the land myself, that is, on that ¼; not owning the whole of the ¼, but I was the first settler on that ¼.

163 SEWELL WRIGHT, being recalled, was examined by Mr. Burgess, and testified as follows:

By Mr. BURGESS. I will ask Mr. Wright some questions with reference to these tax-receipts. I see there are some tax-receipts here in reference to this 80 acres. The tax for the year 1852, on the 80 acres, is only $2.74.

By Mr. THERIG. I thought you said it was not taxable until five years after it was located.

By Mr. BURGESS. It was located in 1848.

By Mr. THERIG. 1852 is only 4 years.

By Mr. BURGESS. We both must be mistaken; there was a time in this State when lands were not taxable for 5 years, but whether this

land was purchased before or after the repeal of that law, we can tell very quick by turning to the United States Statutes.

By the WITNESS. I think I did not pay any taxes until about 4 or 5 years after I got on to it.

By Mr. THERIG. With respect to the 80 acres, is that any criterion to tell about the 40 acres at that time?

A. I suppose likely that the 40 would be taxed higher, according to the number of acres than that 80 would, because it lay like
164 wild prairie along there; and mine, I went right to improving it as soon as I got it.

By Mr. BURGESS. The court will understand that I object to this mode of proving the amount of the taxes by this witness. I have no objection to the fact.

By the COURT. What do you offer these tax-receipts for?

By Mr. THERIG. To show that it was taxed in the year 1850. This property was taxed in 1850, wasn't it, as appears by the tax-receipts?

A. Well.

By the COURT. What is the purpose of proving the payment of taxes at all? Is it to set off against the rents?

By Mr. BURGESS. That's all; to set off against the rents.

By Mr. THERIG. There is a tax-receipt for 40 acres, the N. E. ¼ of the S. E. ¼, section 12, town. 34, range 6, 40 acres, for $2.49, for the year 1850, isn't it?

A. How came that 40 acres mixed in with the 80? Where did that come from?

Q. This is a tax-receipt from the treasurer of Grundy County. So the land was taxed in 1850, wasn't it, according to that?

A. It must be, according to that, but I don't see where that 40
165 acres comes from—the tax on the 40 acres.

Q. There is a redemption-certificate for the taxes of 1849, so that it must have been taxed at that time, mus'n't it?

A. Yes; I suppose so.

Q. Then it must have been taxed from the time or about the time that you purchased it, wasn't it, according to that, according to these tax-receipts?

A. Well, maybe I am mistaken; but I was thinking I did not pay taxes on it a while after I went on, but maybe I am mistaken.

Q. Where are the tax-receipts? Do you know where they are, that you paid taxes?

A. Maybe I could find some of them, and maybe I cannot; I won't be certain. I keep them a while, and they get lost; careless about such things, you know.

By Mr. BURGESS. I submit that the assessment-rolls of the county will show just exactly how much the taxes were on this land from year to year. They are the best evidence of it, and should be produced; i can very easily be done.

By the COURT. I think it is evidence. I don't think it is very satisfactory. However, if he swears that he pays taxes every year, and he is able to state that in 1849 the tax was any particular amount,
166 or in any particular year, it would be some criterion.

By Mr. BURGESS. I am willing to admit that these parties have paid the taxes on this property, and it is easy for them to go to the records and show what the taxes were from the tax-assessor's books.

The complainant also read in evidence a certificate from the clerk of Grundy County, dated July 13, 1869, showing payment of taxes as follows:

No. 1.

N. E. ¼ S. E. ¼, s. 12, town. 34, range 6, taxes 1850, $2.49; paid.
W. ½ S. E. ¼, " 12, 34, 6, taxes 1850, 4.98; paid.
N. ½ W. ½, S. E. ¼, " " " 1850; sold to Butler & Hopkins.

No. 2, for taxes of 1851:

S. W. ¼ S. E. ¼, 12, 34, 6, $1.39; paid.
N. W. ¼ S. E. ¼, " " " 1.39; paid Wm. Craig.
N. E. ¼ S. E. ¼, " " " 1.39; " " "

No. 3, for taxes of 1852:

N. ½, S. E. ¼, 12, 34, 6, 2.74; paid W. Craig.
S. W. ¼ S. E. ¼, " " " 1.10; paid.

No. 4, for taxes of 1853:

N. ½ S. E. ¼, 12, 34, 6, 3.38; paid.
S. W. ¼ S. E. ¼, 12, 34, 6, 1.47.

No. 5, for taxes of 1854:

N. ½, S. E. ¼, 12, 34, 6, 4.62; paid.
S. W. ¼ S. E. ¼, " " " 4.29; paid.

167 No. 6, for taxes of 1855:

N. ¼ S. E. ¼, 12, 34, 6, 6.33; p'd, Treat, by W. Craig.
S. W. ¼ S. E. ¼, 12, 34, 6, 3.55; paid by S. Wright.

No. 7, for taxes of 1856:

N. ½ S. E. ¼, 12, 34, 6, 5.29; paid by O. F. & Co.
S. W. ¼ S. E. ¼, " " " 3.91; paid.

No. 8, for taxes of 1857:

N. ½ S. E. ¼, 12, 34, 6, 6.68; N. ½, Wm. Craig; S. ½, same.
S. W. ¼ S. E. ¼, 12, 34, 6, 3.64; paid by Daniel David.

No. 9, for taxes of 1858:

N. ½ S. E. ¼, 12, 34, 6, 6.98; O. H. & Co.
S. ½ S. E. ¼, " " " 7.55; paid by Daniel David.

No. 10, for taxes of 1859:

N. ½ S. E. ¼, 12, 34, 6, 8.53; paid O. H. & Co.
S. ½ S. E. ¼, 12 " " 7.55; paid.

No. 11, for taxes 1860:

N. ½ S. E. ¼, 12, 34, 6, 7.67; paid by Saml. Craig.
S. ½ S. E. ¼, " " " 7.49; paid.

No. 12, for taxes 1861:

N. ½ S. E. ¼, 12, 34, 6, 6.83; S. Craig.
S. ½ S. E. ¼, " " " 6.52; paid.

No. 13, for taxes 1862:

N. ½ of S. E. ¼, 12, 34, 6, 7.93; paid by S. Craig.
S. ½ " S. E. ¼, " " " 7.95; paid by Daniel David.

No. 14, for taxes of 1863:

N. ½ S. E. ¼, 12, 34, 6, 8.12; paid by Samuel Craig.
S. ½ S. E. ¼, " " " 9.46; paid by Daniel David.

No. 15, for taxes of 1864:

168 N. ½ S. E. ¼, 12, 34, 6, 10.13; paid.
S. ½ S. E. ¼, " " " 13.50; paid.

No. 16, for taxes of 1865:

N. ½ S. E. ¼, 12, 34, 6, 19.92; paid by Samuel Craig.
S. ½ S. E. ¼, 12, 34, 6, 25.16; paid by D. David.

No. 17, for taxes of 1866:

N. ½ S. E. ¼, 12, 34, 6, 10.85; paid.
S. ½ S. E. ¼, " " " 12.66; paid.

No. 17, for taxes of 1867:

N. ½ S. E. ¼, 12, 34, 6, 21.99; paid.
S. ½ S. E. ¼, 12, 34, 6, 27.23; paid.

No. 18, for taxes of 1868:

N. ½, S. E. ¼, 12, 34, 6, 27.30; paid.
S. ½ S. E ¼, 12, 34, 6, 29.16; paid.

STATE OF ILLINOIS,
Grundy County, ss:

I, Saml. B. Thomas, clerk of the county court in and for said county, hereby certify that the foregoing is a correct abstract copy from the books in my office of the taxes assessed on the S. W. ¼ of S. E. ¼, and also of the N. ½ of the S. E. ¼ of section 12, in town. 34, range 6 east, of the 3d p. m., from No. 1 to No. 18, inclusive; in some of which statements the taxes assessed against the S. E. ¼ of S. E. ¼ of said section 12 are unavoidably included, which sums include State, county, and all taxes assessed.

169 Witness my hand and official seal, at Morris, in the county and State aforesaid, this 13th day of July, A. D. 1869.

[SEAL.] SAML. B. THOMAS,
County Clerk.

[5-cent revenue-stamp, canceled.]

Which was all the evidence in the cause.

JOHN A. JAMESON, [SEAL.]
Judge Supr. Ct. of Chicago.

And afterwards, to wit, on the twentieth day of July, in the year last aforesaid, to wit, 1869, there was filed in said clerk's office a certain appeal-bond, which is in the words and figures as follows, to wit:

Know all men by these presents, that we, James M. Adsit and J. A. Farwell, of the county of Cook and State of Illinois, are held and firmly bound unto William Smith in the penal sum of eight thousand dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly, severally, and firmly by these presents. Witness our hands and seals this nineteenth day of July, A. D. 1869. The condition of the above obligation is such that whereas the said William Smith

170 did, on the nineteenth day of July, A. D. 1869, in the superior court of Chicago, in and for the county of Cook and State aforesaid, and of the July term thereof, A. D. 1869, recover a decree against the above-bounden James M. Adsit, impleaded with Sml. Wright, Patrick Rourk,

and others, for the sum of six thousand eight hundred and thirty-nine $\frac{14}{100}$ dollars, besides costs of suit, from which said decree of the said superior court of Chicago the said James M. Adsit has prayed for and obtained an appeal to the supreme court of said State. Now, therefore, if the said James M. Adsit shall duly prosecute his said appeal with effect, and, moreover, pay the amount of the decree, costs, interests, and damages rendered and to be rendered against him in case the said decree shall be affirmed in said supreme court, then the above obligations to be void; otherwise to remain in full force and virtue.

JAMES M. ADSIT. [SEAL.]
J. M. FARWELL. [SEAL.]

Approved.

J. A. JAMESON,
Judge Spr. Ct. of Chicago.

JULY 20, '69.

STATE OF ILLINOIS,
County of Cook, ss:

I, Augustus Jacobson, clerk of the superior court of Chicago,
171 (formerly Cook County court of common pleas,) within and for the county and State aforesaid, do hereby certify that the above and foregoing is a full, true, and complete transcript of all the papers and pleadings called for in the præcipe for record filed herein, and also all orders and decree made and entered of record in said courts, together with the certificate of evidence and appeal-bond filed herein, in a certain cause lately pending in said courts, on the chancery side thereof, wherein William Smith was complainant, and Suel Wright et al. defendants, and I do further certify that the record and files of said Cook County court of common pleas, (now superior court of Chicago,) are in my office, and under my custody and control.

In witness whereof I have hereunto set my hand and affixed the seal of said superior court of Chicago, at Chicago, this 10th day of September, A. D. 1869.

[SEAL.] A. JACOBSON, *Clerk.*

[5-cent revenue-stamp, cancelled.]

And therewith the following assignment of errors, to wit:

STATE OF ILLINOIS:

Supreme court, third grand division, September term, A. D. 1869.

JAMES M. ADSIT, IMPLEADED WITH SUEL Wright, Patrick Rourk, and the trustees of schools of township thirty-four
172 north, range 6 east, in Grundy County, Illinois, appellant,
vs.
WILLIAM SMITH, APPELLEE.

And now comes the said James M. Adsit, the said appellant and plaintiff in error, by King, Scott and Payson, his attorneys, and says that, in the record and proceedings aforesaid, and in rendering and entering the decree aforesaid, there is manifest error, in this, to wit:

1st. The court erred in finding, rendering, and entering the decree in favor of the complainant, the appellee.

2nd. The court erred in finding, rendering, and entering the decree against the defendant Adsit, the appellant.

3d. The decree was contrary to and against the law and the evidence.

4th. The court erred in not rendering and entering the decree in favor of the defendant Adsit, the appellant.

5th. The court erred in not dismissing the bill of complaint as to the defendant Adsit, the appellant.

6th. The court erred in rendering and entering a decree against the said defendant Adsit, the appellant, in any event whatever, for
173 any sum or amount exceeding the amount which he received for the land, to wit: $170, less $40, which he paid to Lewis P. Holmes, with interest thereon, to wit, with interest on the difference between the $170 and the $40 from the time he received the same.

7th. The court erred in rendering and entering a decree against the said defendant Adsit, the said appellant, in any event whatever, for any greater sum or amount than the value of the land-warrant received by him, less the $40 which he paid to Lewis P. Holmes, with interest on the balance or difference from the time the said Adsit received the said land-warrant.

8th. The court erred in rendering and entering the said decree against the said defendant Adsit, the said appellant, for the value of the lands and the rents and profits thereof. Whereas the prayer of the bill is that the defendants, Wright and Rourk, be decreed to release and surrender the possession of the lands to the complainant, the appellee, and that they, the said Wright and Rourk, severally be decreed to pay the rents and profits accruing from the said lands occupied by them respectively.

174 By reason whereof, and for the errors aforesaid, and other errors appearing in the record, the said James M. Adsit, the said appellant and plaintiff in error, prays that the decree aforesaid be reversed, &c.

KING, SCOTT & PAYSON,
Attorneys for Appellant & Plaintiff in Error.

And that afterwards, to wit, on the day of , A. D. 1869, and during the said September term of said supreme court in that year, came the said William Smith, by his attorney, W. T. Burgess, and filed a joinder in error and cross-errors in the words and figures following, to wit:

And the said William Smith, by his attorney, W. T. Burgess, comes and says there is no error in the record, proceedings aforesaid, as above alleged by said Adsit to his prejudice. Yet, nevertheless, under
175 the statute in such case made and provided, should the court hold any of the errors assigned by said Adsit to be well taken, then the said Smith, against the said Adsit, Suel Wright, Patrick Rourk, and the trustees of schools, &c., assign the following cross-errors, viz:

First. That the court should have held the said Wright and Rourk and the trustees of schools charged with notice of the equities of said complainant, as charged in the bill of complaint, to the lands in controversy, and be entitled to the same as prayed for.

Second. And should have charged them, Adsit, Wright, and Rourk, with the rents, issues, and profits of the said lands and premises, Wright & Rourk respectively with the portions arising *arising* out of the parts of the same claimed by the n respectively.

The said Smith is willing to take a decree for money (value of the land) instead of the land itself, but always, and so states it, without prejudice

to his rights in the premises as against all of the defendants should this court hold said Adsit not liable to such decree. Wherefore said Smith prays judgment, &c.

W. T. BURGESS,
For Smith.

176 And that afterwards, to wit, on the day of , A. D 1869, and during the said September term of said supreme court of that year, came the said Suel Wright and Patrick Rourk, by their attorney, and filed a joinder in said cross-errors, in the words and figures following, to wit:

And the said Suel Wright and Patrick Rourk, by Thomas Clowry, their attorney, come and say that there is no error, either in the record or proceedings aforesaid, as above alleged and assigned by said Smith in his assignment of cross-errors. Wherefore the said Wright and Rourk pray judgment, &c.

THOMAS CLOWRY,
Attorney for Suel Wright & Patrick Rourk.

177 And that afterwards, to wit, on the day of , A. D. 1869, and during the said September term of said supreme court of that year, came the said James M. Adsit, by his attorneys, and filed a joinder in said cross-errors in the words and figures following, to wit:

And the said James M. Adsit, by King, Scott & Payson, his attorneys, comes and says that there is nothing in the record or proceeding aforesaid by which the court should have charged the said Adsit, together with the said Wright and Rourk, with the rents, issues, and profits of the said lands and premises in manner and form as above assigned, and alleged by said Smith in his assignment of cross-errors. And
178 the said Adsit says and insists that the errors above assigned by him, said Adsit, in his assignment of errors, are well taken and assigned; wherefore he, the said Adsit, prays judgment, &c.

KING, SCOTT & PAYSON,
Atorneys & of Counsel for Appellant and Plaintiff in Error.

SEPTEMBER TERM, 1869.

To wit, on the sixteenth day of our Lord one thousand eight hundred and sixty-nine, the same being one of the days of said term.

Present, as on the first day.

JAMES M. ADSIT, IMPL'D, *vs.* WILLIAM SMITH. } 339. Appeal from superior court of Chicago.

On this day it was ordered by the court that the time for filing abstracts & briefs be extended as per stipulation.

179 SEPTEMBER TERM, 1869.

To wit, on the twenty-first day of September, in the year of our Lord one thousand eight hundred and sixty-nine, the same being one of the days of said term.

Present, as on the first day.

JAMES ADSIT, IMPL'D, *vs.* WILLIAM SMITH. } 339. Appeal from superior court of Chicago.

Submitted by defendant on briefs to be filed.

SEPTEMBER TERM, 1869.

To wit, on the twenty-third day of September, in the year of our Lord one thousand eight hundred and sixty-nine, the same being of
180 the days of said term.

Present, as on the first day.

JAMES M. ADSIT, IMPLD., *vs.* WILLIAM SMITH. } 339. Appeal from superior court of Chicago.

Submitted by defendant on briefs to be filed.

181 And that afterwards, to wit, on the 26th day of September, A. D. 1870, being one of the days of the said September term of said supreme court, to which day said cause stood continued, an opinion of the said supreme court in said cause was filed in the office of the clerk of said court, with the papers in the cause, and spread at large upon the records of the court in the words and figures following, to wit:

JAMES M. ADSIT, IMPLD., &C., *vs.* WILLIAM SMITH. } No. 339. Appeal from superior court of Chicago.

Opinion by Breese, chief-justice:

This case was before us at a former term, and is reported in 49th Ills., 403. It was then decided on the testimony of Holmes alone, the party from whom Adsit obtained the discharge, and on which a land-warrant was issued as a bounty for military services in the war with Mexico. On his testimony it was held Adsit was the trustee of Holmes, and bound to account for the land in that capacity.

On a rehearing of the case in the superior court, Adsit was a
182 witness, and his testimony puts a different phase upon the transaction, and so balances the testimony of Holmes as to render it impossible to base a decree upon it.

There being no evidence of a trust or of fraud on the part of Adsit, his testimony balancing that of Holmes on that point, nothing is left of the case but the fact of obtaining, by Adsit, Holmes' discharge, and procuring thereon a warrant to be issued for the land in controversy. The most that can be said of this is that the transaction was in violation of an act of Congress, but that would not give a court of chancery jurisdiction to hold Adsit as a trustee and make him accountable as such.

All the matter alleged, of trust and of fraud, has no support in the testimony; nothing appearing to corroborate Holmes' statements, and they being denied by Adsit, the one is as much entitled to belief as the other. There is nothing, then, in the record sufficient to give a court of chancery jurisdiction of the subject-matter; there being no fraud and no trust established, consequently the decree finding a trust existed must be reversed, and the bill must be dismissed.

183 If Holmes has any right to the money Adsit received for the land, he can prosecute that right in a court of law, and recover according to the justice of his case. The decree is reversed for want of jurisdiction.

And that thereupon, on the same 26th day of September, A. D. 1870, during said September term, A. D. 1870, of said supreme court, the following order was made and entered of record in said court, to wit:

JAMES M. ADSIT, IMPLEADED WITH SUEL Wright, Patrick Rourk, and trustees of schools of T. 34 N., R. 6, in Grundy County, *vs.* WILLIAM SMITH. } No. 339. Appeal from superior court of Chicago.

On this day came again the said parties, and the court having diligently examined and inspected, as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, are of opinion that in the record and proceedings aforesaid, and in the rendition of the decree aforesaid, there is manifest error. Therefore it is considered by the court, that for that error, and others in the record and pro-
184 ceedings aforesaid, the decree of the superior court in this behalf rendered be reversed and bill dismissed for want of jurisdiction. And it is further considered by the court that the said appellant recover of and from the said appellee his costs by him in this behalf expended, and that he have execution therefor.

And that afterwards, to wit, on the tenth day of October, A. D. 1870 the same being one of the days of the said September term of said supreme court, there was filed in the office of the clerk of said court a notice which, with the endorsements thereon, is in the words and figures following, to wit:

In the supreme court of the State of Illinois, Sept. term, 1870.

JAMES M. ADSIT, IMPD., &c., *vs.* WILLIAM SMITH. } Appeal & cross-error.

To Mess. King, Scott & Payson, & Thomas Clowry, attys. for appl, &c.

GENTS: I shall on the 11th inst., at the opening of the court, or as soon thereafter as counsel can be heard, present a petition for a rehearing in this cause to the said court then to be in session at Ottawa.

WM. BURGESS,
For Smith.

Oct. 7, 1870.

185 (Endorsed:) Sup. court. Adsit impd., &c., vs. Smith. Notice recd. Notice of which within is a copy this 7th October, 1870. King, Scott & Paysen—Thomas Clowry. Filed Oct. 10, 1870. W. M. Taylor, clk.

And afterwards, to wit, on the tenth day of October, A. D. 1870, and during the said September term of said supreme court, a petition for a rehearing is said cause was filed in the words and figures following, to wit:

Supreme court of Illinois, northern grand division, September term, 1870

WILLIAM SMITH
ags.
JAMES M. ADSIT, IMPD., &c. } Appeal from superior court.

Petition for rehearing.

Smith, by his bill, presented to the court their aspects of his case:

1st. That Holmes did not in fact sell Adsit the land-warrant.

2d. That, being a minor, the power of attorney under which such sale was consummated was absolutely void.

3d. That the sale, being before land-warrant issued, was void by act of Congress.

Either one of these proved Holmes was the owner of the land-
186 warrant, and entitled to the land it located on.

The first, this court says, is not proved; the second it passes in silence; and the third it admits to have been proved, but says: "If Holmes has any right to the money Adsit received for the land, he can prosecute that right in a court of law, and recover according to the justice of his case."

After this court found that an act of Congress had been violated in the transfer of this land-warrant, it seems to me that this concession could have been put as an absolute certainty, and not hypothetically.

But this hypothetical case involves this: that if Holmes was entitled to the money for which the land was sold, he was equally entitled to the land itself, and it was for him to say which he would have. The legal title to this land was never in him, but his property was used in the purchase of it. It is only on the ground of money had and received to his use that he can maintain any action at all. In other words, lands belonging to him were sold by Adsit, and so Adsit should ac-
187 count for the money. But I had supposed that the rendering of an account for money had and received for property equitably belonging to the plaintiff was of equitable cognizance—1 Stor., Eq. Jur. § 453 et seq. And thus this court comes to the conclusion that there was no jurisdiction in this case, when the facts involve one of plainest heads of equity jurisdiction.

And I submit whether it should make any difference in this case upon which of the three grounds Holmes is held entitled to the land. On the first, (on which this court has held him entitled to it,) the property used in buying this land was held to be his because he did not agree to sell that property, and so, equitably, the land was his. And is not that property equally his when the transfer of it is held bad on legal grounds? And is not the land equally equitably his?

But this point of want of jurisdiction was never raised in this case before. So far from it, a demurrer was filed, and the parties withdrew it and filed their answers, (p. 81.)

In Underhill vs. Van Cortlandt, 2 J. Chy Rep. 369, Kent, chancellor, says: "Before I conclude I ought to take notice of an objection that was raised to the jurisdiction of the court. It is said that the Underhills ought to have pursued at law their remedy upon the award,
188 as it was simply for the payment of the money, and no account is sought or called for. To this it is answered that the omission of the complainants in the original suit to sign the lease was a mistake that rendered it necessary to seek their relief here, and that their right arises partly as assignees of a chose in action on which they could not

have a suit at law in their own names. The reasons are, probably, of themselves sufficient, but at any rate, by answering in chief instead of demurring, the defendants submitted the cause to the cognizance of this court, and they come too late at a hearing on the merits, to raise the objection. It would be an abuse of justice if the defendants were permitted to protract a litigation to this extent, and with the expense that has attended this suit, and then at the final hearing interposed this preliminary objection. Such appeared to be the opinion of the majority of the court in the case of Ludlow v. Simond, (2 Cairns, case in error, 40, 56.)" See also Cook v. Stout, 41 Ill., 447.

And can it be that this court, when in the court below the question of jurisdiction that should have been raised there is expressly
189 withdrawn, and the parties submit the issues of fact in the case to that court, and a decree is rendered upon them, will dismiss this case in this court for want of jurisdiction, after a protracted litigation of seventeen years, and when every remedy that these parties have at law is completely barred by the statute of limitations?

I do not find that this point of jurisdiction has been made in this court by the counsel, either when this case was here before or now. But I do find, on pages 12 and 13 of Mr. King's brief for Adsit, both the second and third aspects of this case, as stated by me above, conceded. But he says there was no actual fraud on part of Adsit. Well, what of that? The property—the land-warrant—that Adsit used to purchase this land with was not his, but belonged to Holmes; and that it so belonged to him, all parties dealing with Adsit were bound to know, as each of these aspects of the case appeared on the face of the title-papers themselves, viz.: 1st, that the assignment was a nullity under the act of Congress; and 2d, the power of attorney a nullity because made by a minor.

190 In fact, as I understood this case as presented by the briefs of both branches of the defense, it was whether Adsit should pay the whole or the loss should be divided between them. For if the co-defendants, Wright and Rourk, lose the land, they certainly have a remedy over against Adsit. But I claim that, at the least, Smith, as the assignee of Holmes' equitable right to this land, is entitled to a decree against Wright and Rourk for the land, leaving them to seek their remedy against Adsit. And therefore respectfully ask for a rehearing of this cause.

W. T. BURGESS,
For appellee.

(Indorsed:) Adsit, impd., v. Smith. Pet. for rehearing. Filed Oct. 10, 1870. W. M. Taylor, clerk.

And that afterwards, to wit, on the 14th day of October, A. D. 1870, the same being one of the days of the said September term of said supreme court, an order was made and entered of record in said cause as follows, to wit:

191 JAMES M. ADSIT *vs.* WILLIAM SMITH. } No. 565. Pet. for rehearing.

On this day it is ordered by the court that the petition here entered in this cause be, and the same is hereby, refused a rehearing.

STATE OF ILLINOIS, *ss:*

I, Cairo D. Trimble, clerk of the supreme court in and for the northern grand division of the State of Illinois, do hereby certify the above and foregoing transcript to be a full, true, and complete copy of the record, proceedings, and judgment of the said supreme court in a cause lately pending therein, wherein James M. Adsit, impleaded, &c., was appellant, and William Smith was appellee and plaintiff in cross errors assigned by him against said Adsit, Suel Wright, Patick Rourk, et al., on
192 appeal from the superior court of Chicago, and of the whole thereof, as the same now remains of record in my office.

Witness my hand and the seal of said supreme court, at Ottawa, in said State of Illinois, this 29th day of August, A. D. 1874.

[SEAL.] C. D. TRIMBLE, *Clerk.*

193 At a supreme court begun and held at Ottawa, on Tuesday, the ninth day of September, in the year of our Lord one thousand eight hundred and seventy-three, within and for the northern grand division of the State of Illinois.

Present: Sidney Breese, chief-justice, Pinckney H. Walker, justice, John M. Scott, justice, W. R. McAllister, justice, Benjamin R. Sheldon, justice, John Scholfield, justice, Alfred M. Craig, justice.

WILLIAM SMITH
vs.
PATRICK ROURK ET AL. } No. 76. Error to superior court of Cook.

Be it remembered that heretofore, to wit, on the ninth day of September, in the year of our Lord one thousand eight hundred and seventy-three, came William Smith, plaintiff herein, by W. T. Burgess, his attorney, and filed in said supreme court his certain transcript of record and proceedings in the superior court of Cook County, State of Illinois, in the words and figures following, to wit:

194

195 UNITED STATES OF AMERICA.

STATE OF ILLINOIS,
County of Cook, ss:

Pleas before the honorable the judges of the superior court of Chicago, within and for the county of Cook, and State of Illinois, at a regular term of said superior court of Chicago begun and holden at the court-house, in the city of Chicago, in said county and State, on the first Monday, being the fifth day, of July, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-fourth.

Present: The honorable Joseph E. Gary, chief-justice of the superior court of Chicago; John A. Jameson, William A. Porter, judges; Charles H. Reed, prosecuting attorney; Gustav Fischer, sheriff of Cook County.

Attest:

AUGUSTUS JACOBSON, *Clerk.*

196 And afterwards, to wit, on the nineteenth day of July, in the year 1869, the same being one of the days of the July term of said

court, the following, among other proceedings, were had therein, and entered of record, to wit:

WILLIAM SMITH
vs.
JAMES M. ADSIT, SUEL WRIGHT, PATRICK ROURK, and the trustees of schools of township 34 north, range six (6) east, in Grundy County. } Decree.

And now at this day come the parties, by their counsel, and this cause having been, under the order of the supreme court of this State reversing the decree heretofore rendered herein, and remanding the cause upon writ of error sued out by said complainant to said decree, heard by this court at a former term of this court, and the court now here being fully advised in the premises, doth find that the said James M. Adsit acquired the title to the lands and premises described in the bill of complaint as the north half of the southeast quarter,
197 eighty acres, and the southwest quarter of the southeast quarter, forty acres, section twelve, (12,) in township thirty-four (34) north, range six (6) east, in Grundy County, in trust for said Lewis P. Holmes, the assignor of said complainant, but that the said Suel Wright and Patrick Rourk and said trustees of schools purchased said lands and premises in good faith from said Adsit, and received a conveyance thereof in fee from him, for a valuable consideration fully paid therefor, without notice of the equities of said Holmes and said complainant claiming under him, and that therefore said lands and premises cannot be charged in their hands with said equities, and that said Adsit should account for the value thereof and the rents, issues, and profits thereof, to said complainant; and upon taking such account, it appearing that the said lands and premises are now worth the sum of four thousand two hundred dollars; that the rents, issues, and profits thereof for the fifteen years that have elapsed since the filing of this bill have been of the average value of, the forty acres at the rate of one dollar
198 and sixty-five cents per acre, and the eighty acres at the rate of one dollar and thirty cents per acre, amounting to the sum of two thousand five hundred and fifty dollars, and that the interest that has accrued thereon during said time amounts to the sum of one thousand one hundred and twenty-two dollars, which three items amount to the sum of seven thousand eight hundred and seventy-two dollars, ($7,872,) and that the taxes paid on said lands amount to the sum of one hundred and seventy-three dollars and five cents on the eighty acres, ninety-eight dollars and ninety-three cents on the forty acres, and the interest on the eighty acre taxes to $70.45, and on the forty acres to $40.03; in all, to the sum of one hundred and ten dollars and forty-eight cents; and that the improvements placed thereon amount to the sum of three hundred dollars in value on the forty acres, and the interest thereon to the sum of two hundred and seventy dollars; and that said Adsit paid said Holmes the sum of forty dollars when he, Adsit, received from said Holmes his certificate of discharge, and the interest thereon amount' to fifty
199 dollars and fifty cents; which sums, in the aggregate, amount to ten hundred and forty-two dollars and eighty-six cents, ($1,042.86,) and should be deducted from said sum of seven thousand eight hundred and seventy-two dollars ($7,872,) leaving a balance of six thousand eight hundred and twenty-nine dollars and fourteen cents, which should be paid by said Adsit to said complainant.

It is therefore ordered, adjudged, and decreed that the said Adsit, within thirty days from the date of this decree, pay to the said com-

plainant, or his solicitor for him, the said sum of six thousand ($6,829.14) eight hundred and twenty-nine dollars and fourteen cents, with interest from this date, and the costs of this suit, to be taxed, and that execution issue thereon as upon a judgment at law without further order; or the complainant has liberty to apply to this court for further relief touching the execution of this decree, and that the bill of complaint be dismissed as to the said Suel Wright, Patrick Rourk, and trustees of schools.

And said defendant James M. Adsit excepts to said decree,
200 and prays an appeal therefrom to the supreme court of this State, which is allowed on his filing bond in the penal sum of eight thousand dollars, conditioned as is by law required, with surety to be approved by the court in thirty days.

* * * * * * *
* * * * * * *

And that with said transcript of record, attached thereto and filed therewith, were certain assignments of error, in the words and figures following, to wit:

In the supreme court of the State of Illinois for the northern grand division, Sept. term, 1873.

WILLIAM SMITH, PFF. IN ERROR, *vs.* PATRICK ROURK, SUEL WRIGHT, THE TRUSTEES of schools, 34 N., R. 6 E., impleaded with James M. Adsit.	Error to the Cook superior court.

201 And now at this day comes the said plaintiff in error, by his attorney, W. T. Burgess, and says that in the record, proceedings, and decree aforesaid there is material error manifest of record, in this: That the court below rendered a decree in favor of said Wright, Rourk, & school-trustees, dismissing the bill of complaint as to them; whereas it should have rendered a decree in favor of the complainant against them, according to the prayer of his bill.

Wherefore, for this and other reasons, the said plaintiff in error prays that said decree may be reversed, &c., and he restored, &c.

W. T. BURGESS,
Pff.'s Atty.

202

203 And afterwards, to wit, on the 10th day of September, A. D. 1873, Suel Wright and Patrick Rourk, by King, Scott, and Payson, their attorneys, filed in the office of the clerk of the said supreme court their certain plea, which is in the words and figures following, to wit:

State of Illinois, supreme court, northern grand division, September term, A. D. 1873.

SUEL WRIGHT AND PATRICK ROURK, impleaded with the trustees of schools of township thirty-four north, range six east, in Grundy County, Illinois, impleaded with James M. Adsit, *ads.* WILLIAM SMITH.	In error.

And the said Patrick Rourk and Suel Wright, by King, Scott, & Payson, their attorneys, come and say that the said William Smith

ought not to further prosecute or maintain his writ of error afore-
204 said against them, the said Patrick Rourk and Suel Wright, because they say that, upon the rendition and entry of the decree aforesaid, to wit, on the 19th day of July, A. D. 1869, and before the day of suing out the said writ of error, James M. Adsit, one of the defendants therein, (impleaded with the said Patrick Rourk and Suel Wright,) duly excepted to said decree, and prayed and obtained an appeal therefrom to the supreme court of the State of Illinois, which said appeal was duly prosecuted in said court and a final judgment therein rendered.

That upon said appeal the said Adsit in said supreme court assigned errors to the rendering and entering of the decree aforesaid, and that the said William Smith, the appellee therein, joined in error therein, and also, under the statute in such case made and provided, assigned cross-errors against the said James M. Adsit, Suel Wright, Patrick
205 Rourk, and the trustees of schools, &c., (should the court hold any of the errors assigned by the said Adsit to be well taken;) and that the said Adsit, Patrick Rourk, and Suel Wright joined in error to the said assignment of cross-errors by the said William Smith therein.

And that afterwards, to wit, on the 26 day of September, A. D. 1870, the same being one of the days of the September term of said supreme court of Illinois, held at Ottawa, in said State, by the consideration and judgment of the said supreme court, it was ordered, adjudged, and decreed that the aforesaid decree of the said superior court be reversed, and the bill filed in said suit dismissed for want of jurisdiction.

That in and by the judgment of the supreme court in said cause rendered upon said appeal as aforesaid, the same identical issues between the said William Smith and the said Patrick Rourk and Suel Wright now presented to this court in and by said writ of error for its
206 adjudication and determination were then and there by the said supreme court fully adjudged and determined, and that the said judgment of the said supreme court is still in full force and effect, and not in the least modified or reversed.

And that afterwards, to wit, on the 14th day of October, A. D. 1870, at the September term of said supreme court, upon the petition for the rehearing of said cause filed therein on the part of the said William Smith, the said court ordered that said motion be denied, and that said cause stand reversed and the bill dismissed for want of jurisdiction, in all respects as though said motion for a rehearing had not been made, which said order is still in full force and effect.

(A copy of the record of the proceedings had in the supreme court upon said appeal is hereunto annexed.)

And this the said Patrick Rourk and Suel Wright are ready to verify by the said record.

Wherefore they pray judgment, if the said William Smith ought
207 further to prosecute or maintain his writ of error against them, the said Patrick Rourk and Suel Wright.

KING, SCOTT & PAYSON,
Attys. for said Wright and Rourk.

And afterwards, to wit, on the 13th day of September, A. D. 1873, William Smith, by W. T. Burgess, his attorney, filed in the office of the clerk of the said supreme court his certain replication, which is in the words and figures following, to wit:

In the supreme court of the State of Illinois, northern grand division, of September term, A. D. 1873.

WILLIAM SMITH
vs.
PATRICK ROURK ET AL. } Error.

And the said plaintiff, as to the said plea of said Suel Wright and
208 Patrick Rourk by them herein above pleaded, says precludi non, because he says that the statute therein referred to conferred no right upon the said Smith to interpose or file in the said suit wherein the said Adsit was the appellant and he, the said Smith, was the appellee, the pretended assignment of cross-errors set out in said plea upon the decree rendered in favor of said Wright & Rourk and the trustees of schools, and against the said Smith aforesaid, and now upon error before this court; that no opinion in writing was ever filed or judgment ever rendered by this court touching the said cross-errors so pretended to be assigned as aforesaid, and that the same were disregarded and treated as nullities by this court in the disposition of the said appeal prayed for and obtained by the said Adsit; that no judgment was ever rendered in said cause pending upon the appeal of said Adsit, except as
209 between the said Adsit, the appellant therein, and said Smith, the appellee therein; and this he, the said Smith, is ready to verify by the record, and a day is given, &c.; wherefore said Smith prays judgment, &c.

W. T. BURGESS,
for Smith.

SEPTEMBER TERM, A. D. 1873.

To wit, on the 18th day of September, A. D. 1873, the same being one of the days of said term.

Present as on the first day.

WILLIAM SMITH
vs.
PATRICK ROURK. } No. 76. Error to superior court of Cook County.

And now on this day come defendant, by counsel, and enter a plea in bar on issue, and also move the court for leave to reply & to join in error and file briefs; which said motion is taken under advisement.

210 SEPTEMBER TERM, A. D. 1873.

To wit, on the 23rd day of September, A. D. 1873, the same being one of the days of said term.

Present, as on the first day.

WILLIAM SMITH
vs.
PATRICK ROURK ET AL. } No. 76. Error to superior court of Cook County.

And now on this day again came plaintiff in error, and moved the court for further time in which to file briefs; mo. allowed.

SEPTEMBER TERM, A. D. 1873.

To wit, on the 13th day of September, A. D. 1873, the same being one of the days of said term.

Present, as on the first day.

WILLIAM SMITH *vs.* PATRICK ROURK ET AL. } No. 76. Error to superior court of Cook County.

On this day this case is submitted by plaintiff in error, on briefs filed, and taken on call by the court.

211 In vacation after September term, A. D. 1873.

To wit, on the 20th day of June, in the year of our Lord one thousand eight hundred and seventy-four.

WILLIAM SMITH *vs.* PATRICK ROURK ET AL. } No. 76. Error to superior court of Cook. Filed June 20th, 1874.

Opinion by Schofield, J.:

This is the same record that was before this court at the September term, 1869, in the reported case of Adsit et al. vs. Smith, 52nd Ills., 412. The error now assigned was there assigned by the present plaintiff in error (then appellee) as a cross-error, and there was joinder in error thereon by the present defendants in error.

There was no necessity to redocket the case after the assignment of the cross-error, as that neither changed the title of the case before the court nor required the filing of a new record. The only effect of the assignment of the cross-error was to present an additional question
212 on the same record. Although the present defendants in error were not brought before the court by the appeal of Adsit, and when the cross-error was assigned they were entitled to be notified before it was disposed of, by proper process, yet they waived this by joining in error. Under the statute then and still in force, it was not necessary to obtain the consent of the court to assign cross-errors. It was allowed as a matter of right. When the cross-error was assigned and there was joinder thereon, the questions now attempted to be raised were fully before the court, and its decision thereon is conclusive of this case.

It was then said by the court: "There being no evidence of a trust or of fraud on the part of Adsit, his testimony balancing that of Holmes on that point, nothing is left of the case but the fact of obtaining, by Adsit, Holmes's discharge, and procuring thereon a warrant to be issued for the land in controversy. The most that can be said of this
213, 214 is, that the transaction was in violation of an act of Congress; but that would not give a court of chancery jurisdiction to hold Adsit as a trustee and make him accountable as such. All the matter alleged of trust and of fraud has no support in the testimony.

This view of the case as to Adsit necessarily disposed of the question raised by the cross-error. No theory of the case was then presented, and none is now, by which the present defendants in error can be held to be trustees for the plaintiff in error, except by first

establishing a trust in Adsit, by whose fraudulent conduct alone it is claimed this trust was created.

We are of opinion that the plea presents a complete defense to the writ.

The writ of error is dismissed.

215 In vacation, after September term, A. D. 1873.

To wit, on the 20th day of June, in the year of our Lord one thousand eight hundred and seventy-four.

WILLIAM SMITH *vs.* PATRICK ROURK, SUEL WRIGHT, AND THE school trustees of T. 34 N., R. 6. Grundy Co. impleaded with James M. Adsit.	No. 76. Error to superior court of Cook Co.

On this day came again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, are of opinion that the plea presents a complete defense to the writ; therefore it is considered by the court that the writ of error be dismissed. And it is

216 further considered by the court that the said defendants in error recover of and from the said plaintiff in error their costs by them in this behalf expended, and that they have execution therefor.

217 STATE OF ILLINOIS, *ss*:

I, Cairo D. Trimble, clerk of the supreme court for the northern grand division of the State of Illinois, do hereby certify that the above and foregoing is a true, full, and complete copy of certain parts of the record of the proceedings and judgment of said supreme court in a certain cause lately pending therein, wherein William Smith was plaintiff in error and Suel Wright, Patrick Rourk, and the trustees of schools of township thirty-four north, range six, in Grundy County, impleaded with James M. Adsit, were defendants, upon writ of error sued out by said William Smith to a decree rendered by the superior court of Chicago, (now superior court of Cook County,) as the same now remain of record in my office; which parts of said record are as follows, viz:

The placita of supreme court.
The decree of the superior court.
The assignment of errors.
The plea to such assignment.
The replication to such plea.

218 The orders and judgments of the supreme court.
The opinion of the supreme court therein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said supreme court at Ottawa, in said State, this 29th day of August, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] C. D. TRIMBLE,
Clerk.

219 In the Supreme Court of the United States, of the October term, A. D. 1874.

WILLIAM SMITH, p'ff in error,
vs.
JAMES M. ADSIT, SUEL WRIGHT, PATRICK Rourk, and the trustees of schools in township 34 north, of range 6 east, in Grundy County, Illinois, defendants. } Error to the supreme court of the State Illinois.

And now comes the said plaintiff in error, William Smith, by his attorney, W. T. Burgess, and says that in the record, proceedings, and judgment aforesaid there is error, manifest and material, appearing of record therein, in this, that the supreme court of the State of Illinois erred—

First, in dismissing the suit for want of jurisdiction.

Second, in not, upon the reversal of the decree of the superior court of Chicago in favor of said Smith and against said Adsit, imp'd, &c., rendering, upon the cross errors assigned by said Smith, a decree
220 for the said Smith against said Wright and Rourk, for the lands in the bill of complaint described, and for the rents, issues, & profits thereof, against the defendants, or remanding the cause to the superior court of Chicago, (now superior court of Cook County,) with directions to that effect.

Third, in not allowing the petition for a rehearing.

Fourth, in dismissing the suit upon reversing the decree against Adsit, whereas it should have rendered a decree upon the case made by the pleadings and proofs in favor of the complainant Smith, as prayed for in his bill of complaint, or such as he, under the law of the land, was entitled to against the said defendants, or remanded the cause to the inferior court from which the appeal had been taken to it, with directions to that effect.

Fifth. In reversing the decree in favor of said Smith and against said Adsit imp'd, &c., instead of affirming the same.

In all which matters and things, and in others material and of
221 record therein, the proceedings and judgment of said supreme court are erroneous, and should be reversed, vacated, set aside, and held for nought by this honorable court. Wherefore the said plaintiff in error prays judgment, &c., and that he be restored in all things, &c.

W. T. BURGESS,
For P'ff. in Error.

222 UNITED STATES OF AMERICA, *ss:*

On this record, writ of error is allowed, & writ & citation ordered to issue. Bond for costs is approved.

DAVID DAVIS,
Asso. Jus. S. C. U. S.

BLOOMINGTON, ILL., *Sept'r 5th*, 1874.

223 In the Supreme Court of the United States.

WILLIAM SMITH, PLAINTIFF,
vs.
JAMES M. ADSIT, SUEL WRIGHT, PATRICK Rourk, and the trustees of schools of township thirty-four north, of range six east, in Grundy County, Illinois, defendants.

Know all men by these presents that we, William Smith, acting herein

by my attorney in fact, William T. Burgess, as principal, and William T. Burgess and Hugh A. White, as his surety, are held and firmly bound unto the said above-named defendants in the sum of five hundred dollars, to be paid to the said defendants, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this fifth day of September, A. D. 1874.

Whereas the above-named Smith hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judg-
224 ment rendered in the above-entitled suit by the supreme court of the State of Illinois:

Now, therefore, the condition of the above obligation is such, that if the above-named Smith shall prosecute his said writ of error to effect, and answer all costs if he fail to make good his plea, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

WILLIAM SMITH, [SEAL.]
By W. T. BURGESS, *his Atty. in Fact.*
W. T. BURGESS. [SEAL.]
HUGH A. WHITE. [SEAL.]

Approved Sept. 5th, 1874.

DAVID DAVIS,
Asso. Jus. S. C. U. S.

(Endorsed:) Filed Sept. 8, 1874. C. D. Trimble, clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the supreme court of the State of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said supreme court of the State of Illinois, before you, between James M. Adsit, impleaded with
225 Suel Wright and Patrick Rourk, and the trustees of schools of township thirty-four north, range six east, in Grundy County, Illinois, appellant, and William Smith, appellee, and wherein cross-errors have been assigned by the said William Smith against all the parties above named, defendants in said cross-errors in an appeal from the superior court of Chicago to the said supreme court of the State of Illinois, a manifest error hath happened, to the great damage of the said William Smith, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, in the year of our Lord one thousand eight hundred and seventy-four, in said Supreme Court of the United States to be then and there held, that, the record and
226 proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. M. R. Waite, Chief-Justice of the said Supreme

Court of the United States, this 5th day of Sept'r, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the

[L. S.] WM. H. BRADLEY, *Clk.*

DAVID DAVIS,
Asso. Jus. S. C. U. S.

(Endorsed:) Copy writ of error, deposited in pursuance of the act of Congress in that case made & provided, for the defts. in error, James M. Adsit, Suel Wright, & Patrick , and the trustees of schools of T. 34 N., R. 6 E., in Grundy Co., Ills. W. T. Burgess, for p'ff. in error. Filed Sept. 8, 1874. C. D. Trimble, clk.

227 Supreme court, northern grand division.

STATE OF ILLINOIS, *ss:*

I, Cairo D. Trimble, clerk of the supreme court of said State in and for said division, do hereby certify that the above is a full, true, and complete transcript and copy of the bond filed in my office on the 8th day of September, A. D. 1874, and of the approval thereof thereon endorsed; and also of the copy of the writ of error filed in my office on the same day by the plaintiff in error for the defendants in error, and of the endorsements thereon, as fully as the same now remain therein.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court of Illinois, at my office in Ottawa, this 8th day of September, A. D. 1874.

[SEAL.] C. D. TRIMBLE,
Clerk of Supreme Court, Northern Grand Division, State of Illinois.

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229 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the supreme court of the State of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said supreme court of the State of Illinois, before you, between James M. Adsit, impleaded with Suel Wright and Patrick Rourk, and the trustees of schools of township thirty-four north, range six east, in Grundy County, Illinois, appellant, and William Smith, appellee, and wherein cross-errors have been assigned by the said William Smith against all the parties above named, defendants in said cross-errors, in an appeal from the superior court of Chicago to the said supreme court of the State of Illinois, a manifest error hath happened, to the great damage of the said William Smith, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice
230 done to the parties aforesaid in this behalf: You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, in the year of our Lord one thousand eight hundred and seventy-four, in said Supreme Court of the United States, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause fur-

ther to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. M. R. Waite, Chief-Justice of the said Supreme Court of the United States, this 5th day of Sept'r, in the year of our Lord one thousand eight hundred and and seventy-four, and of the Independence of the United States the

[SEAL.] WM. H. BRADLEY, *Clerk.*

DAVID DAVIS,
Asso. Jus. S. C. U. S.

231 STATE OF ILLINOIS,
Northern Grand Division, ss:

My return to this above writ appears in certain schedules hereto annexed under the seal of the supreme court of said State.

In testimony whereof I have hereunto set my hand and the seal of said supreme court, at my office in Ottawa, in said division, this 8th day of September, A. D. 1874.

[SEAL.] C. D. TRIMBLE,
Clerk of Supreme Court, Northern Grand Division, State of Illinois.

232 (Indorsed:) Smith vs. Adsit et al. Writ of error.

233 In the Supreme Court of the United States.

WILLIAM SMITH
vs.
JAMES M. ADSIT, SUEL WRIGHT, PATRICK ROURK, and the trustees of schools of township thirty-four north, range six east, in Grundy County, Illinois. } Error.

STATE OF ILLINOIS,
Grundy County:

Clinton W. Card, of said county, being duly sworn, says that he did, on the 11th day of September, A. D. 1874, personally serve John D. Cody, John Leach, and Oliver Dix, the trustees of schools of township thirty-four north, of range six east, in said Grundy County, each with a copy of the annexed citation, by delivering the same to and leaving the same with them respectively.

C. W. CARD.

Sworn to and subscribed before me this 11th day of September, 1874.

Attest my hand & notarial seal.

[SEAL.] E. SANFORD,
Notary Public.

234 In the Supreme Court of the United States.

WILLIAM SMITH
vs.
JAMES M. ADSIT, PATRICK ROURK, SUEL WRIGHT, and the trustees of schools of township thirty-four north, range six east, in Grundy County, Illinois. } Error.

STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

William T. Burgess, of said city, being duly sworn, doth depose and say that he did, on the seventh day of September, A. D. 1874, personally

serve William H. King, one of the firm of King, Scott & Payson, attorneys for the said defendants Adsit & Wright, in the supreme court of the State of Illinois, with a copy of the annexed citation in this cause by delivering such copy to and leaving the same with him, and in
235 like manner on the 8th day of September, A. D. 1874, this deponent did serve Thomas Clowry, the attorney for said defendant Patrick Rourk, in said supreme court of the State of Illinois, with a copy of said annexed citation by delivering such copy to and leaving the same with him.

W. T. BURGESS.

Subscribed and sworn to before me this 12th day of September, A. D. 1874.

Attest my hand and seal notarial.
[SEAL.] CHAS. W. TOWNSEND,
Notary Public.

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237 UNITED STATES OF AMERICA:

To James M. Adsit, Suel Wright, Patrick Rourk, and the trustees of schools of township thirty-four north, range six east, in Grundy County, Illinois, greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the second Monday in October next, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Illinois, wherein William Smith is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable M. R. Waite, Chief-Justice of the said Supreme Court of the United States, this 5th day of September, in the year of our Lord one thousand eight hundred and seventy-four.

DAVID DAVIS,
Asso. Jus. S. C. U. S.

238 (Indorsed:) Supreme Court. Smith vs. Adsit et al. Citation.

(Indorsement on cover:) No. 505. Illinois sup. court. William Smith, plaintiff in error, vs. James M. Adsit, impleaded with Suel Wright and Patrick Rourk, and the trustees of schools of township 34 N., R. 6 E., in Grundy County, Illinois. Filed 19th September, 1874.

Supreme Court of the United States.

OCTOBER TERM, 1874.

No. 505.

SMITH, PLAINTIFF IN ERROR,

vs.

ADSIT, ET ALS., DEFENDANTS IN ERROR.

Motion to dismiss for want of jurisdiction.

Now comes the above defendant in error and moves the court to dismiss the suit for writ of error heretofore issued in this case ; because—

1. This court has no jurisdiction of said case.

2. It nowhere appears in the record that the decision of the court below was against any right claimed under a statute of the United States.

3. It appears affirmatively that the decision of the court below was against the plaintiff in error, because and for the reason that said court had not jurisdiction of said cause.

4. This case, and all questions arising here, have been fully decided by the court. (16 Wall., 185.)

THOMAS WILSON,
Attorney for Defendants in Error.

Filed January 22, 1875.

ARGUMENT IN SUPPORT OF THE MOTION.

This case was before this court as No. 105, December Term,

1872, when it was heard and decided upon the present record as far as page 73. It was then heard, on motion to dismiss for want of jurisdiction, because no Federal question was raised in the record.

The opinion was delivered by Mr. Justice Strong, and is reported in 16 Wallace, 185.

The judgment of the court was that the writ be dismissed, *with costs*.

The present motion is precisely the same as the former, and the question now presented is precisely the same at that before decided.

It must be considered as *res judicata*. A perusal of the opinion will show that no Federal question was raised in the court below; that no decision was made by that court upon any such question, and that no right, title, privilege or immunity under any act of Congress was decided adversely to the plaintiff in error. On the contrary, it appears that the bill was dismissed in the court below for want of jurisdiction. The case was brought upon the equity side of the court, and its equitable jurisdiction claimed, by reason of an alleged fraud committed by Adsit upon Holmes; that out of this fraud and depending upon it, there sprung a constructive trust between Adsit and Holmes. Now, the court found against the fraud and against the trust, and therefore decided that it had no equity jurisdiction, and dismissed the bill. This was the case as made in 16 Wallace, wherein this court decided, first, that no Federal question appeared to have been raised or decided in the court below. Second, if so, it did not appear that any such question was decided adversely to the plaintiff in error; and, third, the bill having been dismissed in the court below, for want of jurisdiction on the equity side, the judgment respecting the extent of its equitable jurisdiction was, of course, not reviewable here, and so the writ of error was, as before stated, dismissed with costs.

Since this decision by this court, the plaintiff in error has taken further proceedings in the court below. They are to

be found, commencing on page 75 of the record. The judgment of the court thereon is to be found on page 79, and the opinion delivered on page 78.

These proceedings will show that the decision and judgment of the court formerly made covered the whole case, and that no question was then raised that has not been decided in the former opinion and judgment; that the cross errors then assigned, were before assigned, were considered by the court, and included in its judgment.

Therefore the court adhered to its former decision.

I ask that the present writ be dismissed with costs and damages.

THOMAS WILSON,
Attorney for defendants in error.

IN THE

SUPREME COURT

—OF THE—

UNITED STATES,

October Term, 1874.

WILLIAM SMITH,

vs.

JAMES M. ADSIT, PATRICK ROURK, *et al.*

No. 505.

Plaintiff's Brief, on motion to dismiss.

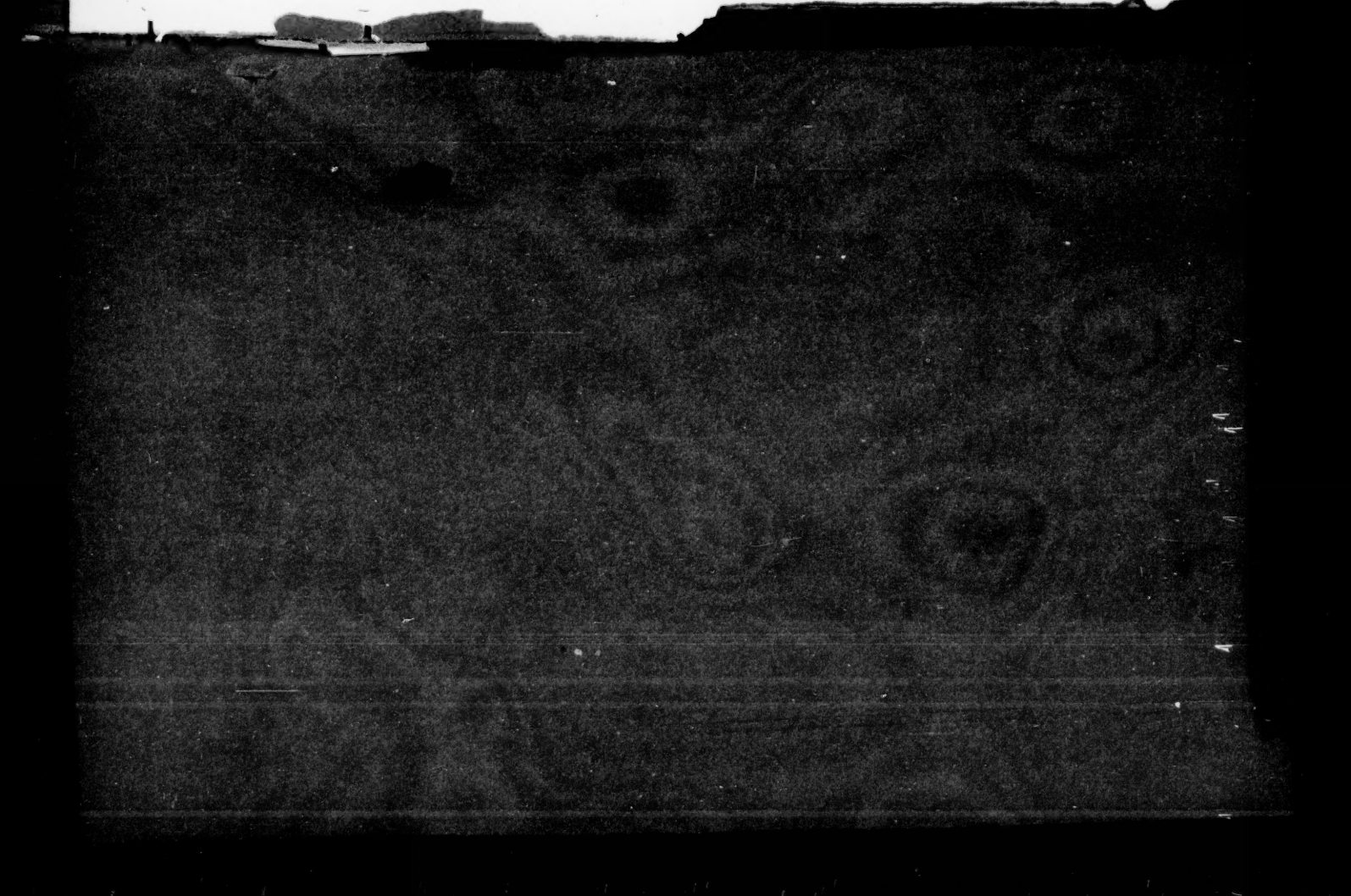
W. T. BURGESS,

Pffs. Att'y.

CHICAGO:

Guilbert & Clissold, Printers, 188 E. Madison Street.

1875.



In the Supreme Court of the United States.

OF OCTOBER TERM, 1874.

WILLIAM SMITH,
vs.
PATRICK ROURK, SUEL WRIGHT, JAMES M. ADSIT, *et al.*

Answer of Plaintiff to the motion to dismiss suit of error.

As I understand this case from the report of it in 16 Wall., 185, it was then dismissed upon the hypothesis, that there had been no appeal taken by Smith, the now and then plaintiff in error, from the decree of the lower court, (the Superior Court of Chicago,) dismissing his bill as to Wright and Rourk, and the questions involved as between them and him, had therefore not been passed upon by the State Supreme Court. Acting upon the construction thus given by this court to the proceedings in and judgment of the State Supreme Court, Smith sued out a writ of error from that court, to reverse this decree of the Superior Court in favor of Wright and Rourk, against him, making them, Wright and Rourk, parties impleaded with Adsit. They, Wright and Rourk, came in and pleaded specially the cross errors assigned by Smith against them in Adsit's appeal, and that they had joined in error upon them in bar; and the State Supreme Court sustained their plea, refused to entertain the case, and dismissed the writ, *expressly* upon the ground, *that those defendants, Wright and Rourk, were before that Court upon such cross errors and joinder therein.* Thus holding that there was an appeal from

that decree, and it had affirmed it, and so passed upon all the rights of all the parties, when this court had held in its opinion upon the same record that there had been no appeal from that decree and the State Supreme Court had not passed upon those rights.

I have attached to and it forms a part of the record in this case the proceedings, showing the plea of Wright and Rourk and replication to it, the opinion and judgment of the State Supreme Court upon that writ of error, and call the attention of the court to the fact that the statutes of the State, R. S. 1845, § 19, p. 144, Revision of 1874, p. 329, make the opinion part of the record, and to the fact that these cross errors and joinder appear both in the present and former records in this court.

I submit therefore that these parties are bound by a construction which they claimed to be the correct one of these proceedings, and in which that court sustained them by rendering judgment in their favor.

Conceding that the record of this case is as construed in June, 1874, by the State Supreme Court, does that record thus construed present the *question* necessary to give this court jurisdiction? Has a right *claimed* under a statute of the United States been *denied* by the Supreme Court of the State? That appears from the record from the language of that Court now used twice. First it said:

"Nothing is left of the case, but the fact of obtaining by Adsit Holmes' discharge, and procuring thereon a warrant to be issued for the land in controversy. The most that can be said of this is, *that the transaction was in violation of an act of congress.*"

And then that court denied the relief which the plaintiff, by reason of that act, claimed to be entitled to. It said: "That would not give a court of chancery jurisdiction to hold Adsit as a trustee, and make him accountable as such."

In commenting upon this language in its second opinion it says: "This view of the case as to Adsit necessarily disposed of the question raised by the cross error. No theory of the case was then presented and none is now by which the present defendants in error [Wright and Rourk] can be held to be trustees for the

plaintiff, [Smith] except by first establishing a trust in Adsit." I stop the quotation before the end of the sentence to remark that there are three grounds of fraud charged in the complaint; one, *actual*, in claiming a sale when it was only a pledge of the papers; the other two, *constructive;* the *minority* of Holmes, and the *violation of an act of Congress;* yet the court draws no distinction, and uses this general language to conclude the sentence with, "by whose [Adsit's] *fraudulent conduct alone* it is claimed this trust was created." Now, what was set up and claimed by the cross error alluded to? "First. That the court should have held the said Wright and Rourk, and the trustees of schools, charged with notice of the equities of said complainant, as charged in the bill of complaint, to the lands in controversy, and *he entitled to the same as prayed for.*" Why did he claim to be entitled to the land? Because Adsit had been guilty of a violation of an act of Congress in getting the legal title, (one of the frauds claimed by the cross error,) and then had transferred it to Wright and Rourk, charged with notice of such violation.

The facts of the case are sufficiently set out in the statement preceding the opinion of the court, 16 Wall. 185, except that the answer of Adsit admitted the violation of the act of Congress, as charged in the bill, the answer of the other defendants denied it, and then *they proved it* by Adsit, their own witness.

Holmes claimed, under the act of Congress referred to in the bill of complaint, to be entitled to the land. The legal title Adsit had acquired from the United States. He transferred it to other parties before he obtained his patent upon the papers as they existed in the land office. These papers, and the patent when issued, advised all parties, claiming under them, that the sole right in Adsit in this land, was as the assignee of Holmes, under a land warrant, issued to Holmes and assigned to Adsit under the power of attorney. *That power was simply void by the act of Congress set up in the bill.* Holmes so claimed it and assigned the land to Smith, the complainant, and plaintiff in error, who avers in his bill that by reason of that violation he is entitled to the legal title and a conveyance of the land from the parties who had derived that legal title from Adsit, with notice,

Whether the facts will sustain the right as set up is one thing: but a right under an act of Congress is specifically made in the pleadings of this case, and the decision of the State court is *in totidem verbis* against that right. So that we have both in the pleadings and in the judgment of the court, this vital question *fairly* raised and squarely denied of record.

Bridge Prop. v. Hoboken, 1 Wall, 116.
Brooks v. Martin, 2 Wall, 86.
Dyke v. McVay, 16 Ill., 41.
Rose v, Buckland, 17 Ill., 309.
Isaac v. Steele, 3 Scam., 99.
Bruner v. Manlove, *ib.* 340.
Brill v. Stiles, 35 Ill., 308.
Smith v. Adsit, 29 Ill., 409.

These cases sustain as well the jurisdiction of this court as the point that the only remedy of Smith was in a court of equity to compel a conveyance from the holders of the legal title or to compel an account from Adsit.

I have interposed a cross motion for leave to assign errors upon the record of June, 1874, part of the record in the case. I do it to present the question fairly before the court. One judgment or the other I claim has denied the plaintiff a right he *claimed* under the Act of Congress. They are both substantially before this court, and under one or the other the plaintiff should be heard before this court. If not under the first then surely under the second.

W. T. BURGESS.
For Pff. in error.